

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 20

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 26, 2018.

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14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
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1 THE COURT: All right. Good morning,
2 everyone. Everybody take their seats. Thank you
3 for being here on time, ready to go.

4 Let's see if we can use this time to get
5 our Rule 29 motions completed so we keep our
6 schedule with the jury. I'll try to articulate this
7 a little better as the day goes on, but I'm
8 beginning to have some questions on the conspiracy
9 to assault resulting in great bodily harm. I'm not
10 seeing that in the VICAR Statute.

11 So I think I may have to have a little
12 briefing on that, because I think you've got murder
13 covered, but I'm not seeing how you -- when I look
14 at the New Mexico UJI, it doesn't have an intent
15 requirement to commit the aggravated battery with
16 the definition of serious bodily injury. So take a
17 look at that. I may need a pocket brief on that,
18 because I'm struggling a little bit to see how that
19 crime that's alleged violates VICAR, so take a look
20 at that. I'll try to flesh that out as I go through
21 the day.

22 Who wants to go next? Ms. Bhalla, were
23 you going to go next on your Rule 29?

24 THE COURT: Mr. Maynard?

25 MR. MAYNARD: Thank you, Your Honor, yes.

1 Judge, I know with Rule 29 the Court can't
2 make credibility decisions with respect to the
3 testimony. Although if the testimony just really
4 borders on the incredible, it reaches a point
5 sometimes where it may be insufficient to prove a
6 case to a reasonable jury beyond a reasonable doubt.

7 And what we have here, dealing with Count
8 6, the conspiracy to murder, and 7, the murder, we
9 have a situation where the witnesses have all been
10 impeached for various reasons which have been -- are
11 referred to in the jury instructions, as well, if we
12 get to that juncture -- drug abuse, prior
13 inconsistent statements, criminal record, character
14 issues, and so forth.

15 And the evidence is also very
16 circumstantial, at best, given that there is no
17 direct evidence that Mr. Herrera had any control
18 over those people who were in the blue pod that
19 actually carried out the murder -- the four people
20 who carried out the murder were not acting under his
21 instructions. There is no such evidence, and I
22 would ask the Court to consider a judgment of
23 acquittal under Rule 29, because the evidence is
24 just not there beyond a reasonable doubt on either
25 of the two counts.

1 THE COURT: All right. Thank you, Mr.
2 Maynard.

3 Mr. Castellano, do you have a response on
4 Mr. Herrera's motion?

5 MR. CASTELLANO: Yes, Your Honor.

6 The one thing that hasn't been mentioned
7 yet is the recordings themselves, so that would be
8 Mr. Herrera's own words indicating that he ordered
9 the hit. So that's captured by recordings.

10 Also, Mr. Armenta indicated that in the
11 yard Mr. Herrera told him that he had ordered the
12 hit, as well, because he -- because Armenta and
13 Montoya had not earned their bones yet. And then
14 when Mr. Rodriguez and Mr. Sanchez were speaking to
15 Carlos Herrera through the door, there is some
16 indication that this might be delayed a little bit,
17 and Mr. Herrera said that they just needed to get it
18 done.

19 So there is, in addition to the
20 recordings, there is plenty of other evidence out
21 there. In addition to Carlos Herrera's position as
22 a llavero in yellow pod, he was duty bound to make
23 sure that happened. So circumstantially and direct,
24 we have evidence of his involvement in that crime.

25 THE COURT: All right. Thank you, Mr.

1 Castellano.

2 Mr. Maynard, do you have anything further
3 on your motion you want to say?

4 MR. MAYNARD: Your Honor, basically, of
5 course, this -- these -- part of the problem with
6 the statements that are recorded is that the
7 statements that were recorded and the transcripts,
8 recordings that the jury heard, they really don't
9 say explicitly much, if anything. They dance around
10 the issue a lot, a lot of politics dealing with the
11 SNM, internal politics, and so forth.

12 I think the closest one of the witnesses
13 came was -- and I can't remember exactly -- I think
14 this was Mr. Cordova saying that in the final
15 analysis, if you believe Mr. Cordova's testimony,
16 and that's a stretch, there is a statement that he
17 attributes to Mr. Herrera, basically saying, "Let
18 the blue pod deal with it." So that's basically our
19 response, Your Honor.

20 THE COURT: All right. Thank you, Mr.
21 Maynard.

22 Well, as Mr. Maynard points out, at this
23 stage the burden is quite high for a defendant to
24 avoid this issue going to the jury. And I do think
25 that when he argues that some of the evidence is

1 incredible, I do think that's probably a
2 determination that the jury should make rather than
3 the Court should make.

4 I realize, having now looked at all these
5 transcripts, there is a lot of politics and a lot of
6 discussions in there, and, you know, there is not
7 that just flat statement that's a confessional
8 statement in the recordings.

9 But there is a lot of circumstantial
10 evidence, particularly with the recordings, where
11 Mr. Herrera says some very incriminating things,
12 combined with the statements from Armenta and Mr.
13 Rodriguez. And I do think there has been evidence
14 establishing Mr. Herrera's position in the SNM
15 organization.

16 So I'm inclined to think this is an issue
17 the jury ought to decide that I shouldn't take away
18 from the jury. So at the present time, I'm going to
19 deny the Rule 29 motion as to Mr. Herrera, and allow
20 the case to proceed to the jury.

21 All right. Mr. Villa, do you want to go
22 next?

23 Ms. Jacks?

24 MR. VILLA: Unless Ms. Jacks wants to.

25 MS. JACKS: I'll go last.

1 THE COURT: All right. Mr. Villa?

2 MR. VILLA: Your Honor, pursuant to Rule
3 29, I move for a directed verdict with regard to
4 both Count 6 and Count 7 for Mr. Perez, the
5 conspiracy to commit murder and the murder of Javier
6 Molina.

7 With respect to the conspiracy, the
8 evidence that we have that Mr. Perez actually knew
9 the object of the conspiracy, which was to kill
10 Javier Molina, and agreed in some way, essentially
11 comes from Mario Rodriguez.

12 Now, I know we've got Mr. Perez'
13 statements two years later, and I'll deal with
14 those, but the testimony of Mario Rodriguez is that
15 he saw Dan Sanchez standing by the door of Mr.
16 Perez. It appeared like they were having a
17 conversation. He didn't hear what any of those
18 words were.

19 And that then he came over, asked --
20 himself asked the CO to open Mr. Perez' door. The
21 door was opened, and Mr. Sanchez said, "Take that,"
22 or "We need that." And Mr. Rodriguez testified that
23 he recognized right away what he was pointing to,
24 the piece on the walker, that he then took the
25 walker, started to turn it upside down, looked for

1 something to take the piece off, found some nail
2 clippers.

3 And it was in that point of the event that
4 Mr. Perez allegedly says, "I'm down for whatever, as
5 long as it's not me." And I just don't think, Your
6 Honor, that that rises to the level of the agreement
7 to kill Javier Molina. He's not doing anything
8 except making a statement. You know, they didn't
9 ask him for permission, from the testimony we heard
10 from Mario Rodriguez. And I'm not sure that it
11 matters, given what the testimony was. There wasn't
12 any objection or, you know, agreement, if you will.
13 Essentially, Mario Rodriguez did everything.

14 Now, if we fast-forward to the statements
15 made to Billy Cordova, at best, there is some -- you
16 know, there is certainly some evidence I think the
17 Government would point to that Mr. Perez says he
18 agreed. But I think there are certain other
19 statements in there that kind of balance those out a
20 little bit.

21 He didn't -- in the statements to Billy
22 Cordova, he didn't know about the paperwork. There
23 is statements where Mr. Perez says, referring to the
24 information about Mr. Molina, that came out
25 afterwards. And so those statements are not

1 sufficient in conjunction with what Mario Rodriguez
2 testified to, to demonstrate to a jury, even in the
3 light most favorable to the Government, that Mr.
4 Perez made some sort of agreement before Mario
5 Rodriguez took the walker and started to take the
6 piece off of it.

7 With respect to the murder, he's certainly
8 not on the hook, if you will, for killing
9 Mr. Molina. I think, at best, the evidence is that
10 he may have aided and abetted the murder. And I
11 think when we look at the aiding and abetting law
12 and the proposed instruction, Mr. Perez had to have
13 known the target of the murder, he had to have the
14 specific intent to kill Javier Molina. And we just
15 don't have the evidence that that was so.

16 And I also think that he has to take -- do
17 more than what the evidence is that I just went
18 over, to actually have aided and abetted as it's
19 required under both the state law and the federal
20 law with respect to aiding and abetting.

21 And so for those reasons I would ask you
22 to direct a verdict on both Counts 6 and 7.

23 THE COURT: All right. Thank you, Mr.
24 Villa.

25 Mr. Castellano, you have a response to

1 this motion?

2 MR. CASTELLANO: Yes, Your Honor. I think
3 Mr. Villa basically conceded that there is
4 information in the transcripts and the recordings by
5 which a jury could make these findings, and rule
6 against him or vote for guilty under the
7 circumstances. So viewed in the light most
8 favorable to the United States, even Mr. Villa
9 acknowledges that there is evidence in the
10 transcripts. And so the Court doesn't have to make
11 those findings. The Court has to leave it to the
12 jury at this point.

13 In addition, Mr. Perez admitted to Lupe
14 Urquizo and to David Calbert that he provided his
15 shanks -- his walker to be made into shanks. And he
16 has said on more than one occasion that, "We all
17 have to do our part, no matter how large or small."
18 So he is indicating that he did his part. And the
19 murder doesn't happen without the weapons. So
20 clearly he provided the materials in this case which
21 did aid and abet that murder.

22 THE COURT: All right. Thank you, Mr.
23 Castellano.

24 Mr. Villa, do you have anything further on
25 your Rule 29 motion?

1 MR. VILLA: Yes, Your Honor. The reason
2 why I think Mr. Perez' post-crime statements that
3 are -- the earliest of which is June 2015, to Mr.
4 Urquizo on the van to PNM -- are not reliable in and
5 of themselves or are not enough, in and of
6 themselves, for the Government to overcome directed
7 verdict. In addition to the times that it
8 contradicts what we know actually happened, Mr.
9 Perez didn't provide the pieces of the walker.
10 Mario Rodriguez took them. And there is no
11 information that we have that at the time Mr. Perez
12 assisted or aided in any way other than, perhaps,
13 not to say anything to authorities. And that we
14 know is not enough.

15 THE COURT: All right. Thank you, Mr.
16 Villa.

17 Well, here we do have much stronger
18 statements and information in the record that Mr.
19 Perez provided his shank (sic) to the conspiracy to
20 be used to murder Mr. Molina. There is evidence in
21 the transcripts. The transcripts aren't going to be
22 part of the evidence, but the audios are. And when
23 you look at those and listen to those, there are
24 statements of -- I know that Mr. Perez is taking the
25 position that he was not being truthful when he was

1 making those statements on the transcripts, but they
2 are there. And that's a conflict as to whether he
3 was lying then, or was telling the truth then.

4 In addition, we do have the testimony of
5 Calbert, Urquizo, and they also provided multiple
6 statements that corroborate the version that the
7 Government is giving to Mr. Perez' transcribed and
8 audio-recorded conversations. So these statements
9 that are being provided with Mr. Perez' own
10 statements, I realize they're post-crime, but I
11 don't think I'm the one that should determine the
12 reliability of that issue. I think that's an issue
13 that the jury ought to make a determination.

14 I don't think the defendant has overcome
15 the strong standard that the Court is required to
16 exercise at this time under Rule 29. And I have to
17 view all evidence in favor of the Government. And
18 if I take the -- just the statements Mr. Perez made,
19 I think that those would overcome it. But there is
20 some -- and quite a bit of corroborating information
21 to the theory that on those tapes Mr. Perez was
22 telling the truthful version at that point.

23 So I'm going to deny the Rule 29 motion as
24 to Mr. Perez, and allow the jury to make the
25 determinations of reliability and when Mr. Perez was

1 telling the truth and when he wasn't. I think those
2 are issues for the jury to decide.

3 All right. Ms. Jacks, you have your
4 motion?

5 MS. JACKS: I do. I'll be brief because I
6 think, basically, I don't want to repeat the
7 arguments of others.

8 I would second the comments of Mr.
9 Maynard, and just note that, at least as to Mr.
10 Sanchez, the Government's case is really the
11 uncorroborated testimony of accomplice informants
12 that are actually liable for the Molina homicide.

13 We also know that these individuals have
14 previously colluded to make up false stories about
15 the Molina homicide. And this is just one in a
16 series of false stories that they've told.

17 Unlike some of the other defendants, there
18 are not recordings of Mr. Sanchez that work to
19 corroborate the stories of these informants. So I
20 think to that extent, he has a stronger -- a
21 stronger motion with respect to Rule 29.

22 THE COURT: All right. Thank you, Ms.
23 Jacks.

24 Mr. Castellano, do you want to speak to
25 Mr. Sanchez' Rule 29 motion?

1 MR. CASTELLANO: Yes, Your Honor. Ms.
2 Jacks' comments are really better suited for closing
3 arguments to the jury. And if that's the case, then
4 clearly there is sufficient information to go to the
5 jury for their determination. So she's asking the
6 Court make credibility determinations based on the
7 evidence. But Mr. Armenta indicated that Daniel
8 Sanchez ordered him to murder Mr. Molina, and Mr.
9 Rodriguez indicated the same, that he agreed with
10 Mr. Sanchez, that Mr. Sanchez gave the orders, and
11 that Mr. Rodriguez carried out those orders by
12 talking to other members.

13 So based on that information, clearly
14 there is sufficient evidence to give this to the
15 jury, and those arguments don't overcome the Rule 29
16 standard.

17 THE COURT: Anything further, Ms. Jacks?

18 MS. JACKS: No, Your Honor. Although I do
19 have another motion after this.

20 THE COURT: All right.

21 Well, I think that we knew this day was
22 coming when we would be at this point, and
23 particularly with -- as to Mr. Sanchez, a great deal
24 of the evidence against him is from accomplices and
25 informants, and so as we've all worked on these jury

1 instructions over the weekend, and as I worked on
2 them, there is a lot of safeguards in the jury
3 instructions.

4 But as we all know, they also say that
5 this is admissible testimony; it's proper for plea
6 bargaining; it's proper to record things. I know he
7 doesn't have as much recordings, but we do have the
8 statements of Mr. Armenta and Mr. Rodriguez that,
9 with the safeguards that we're going to put in about
10 accomplices and informants and plea agreements and
11 those sort of things, this is all proper evidence,
12 and it's been admitted. And I do think it's
13 sufficient to -- when viewed in the light most
14 favorable to the Government, and be sufficient for
15 it to go to the jury.

16 So I'll deny Mr. Sanchez' Rule 29 motion.
17 And I do agree that there is a lot of grist there
18 for the closing arguments, but I do think that those
19 issues are for the jury to decide, and not for the
20 Court to take away from the jury.

21 So other than that, I'm going to come back
22 and continue to visit this Julian Romero count, the
23 legal sufficiency of it -- I mean, once we establish
24 that there is not a serious bodily injury, there is
25 not really a factual issue. So it comes down to

1 just being a legal issue. And I'm still trying to
2 figure out how that count fits into the VICAR. So I
3 might want to focus on that. But I'll try to do
4 that and give you my thoughts as the day develops.

5 Y'all may have submitted the letters this
6 morning. I haven't seen them yet. So I'll have Ms.
7 Standridge and my law clerk look for them, but I was
8 hoping that I'd be able to spend the day looking at
9 your letters. So I hope they were sent, but I
10 haven't seen them yet.

11 MS. JACKS: Your Honor, we filed it at
12 8:30 last night, and surprisingly we were able to
13 agree on, I think, everything.

14 We also submitted a red-lined version of
15 the Court's sixth jury instructions, some of which
16 you'll see we've agreed to. The rest we are working
17 through. We may have some disagreements, but as of
18 now, we're attempting to agree.

19 THE COURT: Okay. Well, good. I thought
20 there might be a good shot. I thought that -- I
21 hope what I have done was helpful in narrowing the
22 issues. And I thought that probably we were at a
23 point where we might be able to get over the hump
24 together, and have a pretty good set for the jury.
25 But I'll take a look at what you sent here, and try

1 to get something in your hands so you can look at it
2 and we can figure out where the gaps are.

3 Before we bring the jury in, is there
4 anything we need to discuss while we're together?
5 Anything I can do for you?

6 How about from the Government's
7 standpoint? Ms. Armijo? Mr. Castellano? Mr. Beck?

8 MR. BECK: I think the Government filed a
9 motion in limine yesterday regarding one of Rudy
10 Perez' witnesses that the Court may look over. I
11 don't think this person -- I don't think Dr.
12 Brislen, or any of the other witnesses implicated by
13 that motion, are being called as witnesses today.
14 So I don't think it's immediate, but I just wanted
15 to alert the Court.

16 THE COURT: All right. Ms. Standridge
17 just handed it to me, so I'll start taking a look at
18 it.

19 How about from the defendants? Anybody
20 have anything? Ms. Jacks?

21 MS. JACKS: Your Honor, I do. I have a
22 renewed motion to sever Mr. Sanchez at this time.

23 THE COURT: All right. Do you want to
24 argue it?

25 MS. JACKS: Briefly.

1 THE COURT: All right.

2 MS. JACKS: Your Honor, based -- first of
3 all, I just want to sort of review where we are.
4 Because prior to the start of trial, the Friday
5 before trial, the Court had ruled that there would
6 be two juries, and that the jury that was hearing
7 the case against Mr. Sanchez would not hear the
8 audio recordings of Carlos Herrera and Rudy Perez, I
9 think through witnesses Gerald Archuleta and Billy
10 Cordova.

11 And then on Sunday, the Court changed its
12 mind after the Government represented that it would
13 redact or essentially Brutonize those statements so
14 that they wouldn't directly refer or implicate Mr.
15 Sanchez, making it more likely that a jury might be
16 able to follow the Court's instructions not to
17 consider that evidence against Mr. Sanchez.

18 And I think, really, most -- most acutely
19 in the testimony of Billy Cordova last Thursday and
20 Friday, the Government, while they may have excised
21 some of the direct references to Mr. Sanchez in the
22 portions of the recordings that they played for the
23 jury, they certainly elicited testimony from Mr.
24 Cordova that directly implicated Mr. Sanchez by
25 name.

1 And so I -- I think at this point, based
2 on -- I feel likes it's kind of a bait and switch.
3 We're going to take out the references to him, and
4 then, when we've got him on the stand, we're going
5 to have him talk about Mr. Sanchez. And I think at
6 this point, it's really impossible for the -- for
7 even the most conscientious juror to follow the
8 Court's instructions not to consider that evidence
9 against Mr. Sanchez.

10 And I think it -- it's aggravated by the
11 fact that the same cooperating witnesses that are
12 going to be -- the jury is going to use in assessing
13 the credibility of the Government's case against Mr.
14 Perez and Mr. Herrera, those are the same witnesses
15 they're going to have to evaluate as to Mr. Sanchez.

16 And so we're, essentially, asking them to
17 look at the evidence and find the evidence
18 corroborated as to some defendants, but yet ignore
19 that corroboration when they are evaluating the
20 truth or the credibility of the Government's charges
21 against Mr. Sanchez.

22 And I would reassert that Mr. Sanchez has
23 a Fifth Amendment right to be tried with evidence
24 that's admissible against him, and not to be
25 convicted based on inadmissible evidence.

1 And he also has the Sixth Amendment right
2 to confrontation. And I think what's happened here,
3 through the way that the Government has dealt with
4 these recordings, in particular the Billy Cordova
5 recordings, is at this juncture, that can't happen.
6 I think it's impossible. I mean, I -- I think it's
7 asking too much of even your most conscientious
8 jurors.

9 So what I would request is basically a
10 mistrial as to Mr. Sanchez, and a de facto severance
11 based on that.

12 THE COURT: All right. Thank you, Ms.
13 Jacks.

14 Mr. Beck? Mr. Castellano? Do you want to
15 address that issue?

16 MR. CASTELLANO: Your Honor, Ms. Jacks has
17 not defined what those statements are, so it's hard
18 to take those out of context. So I think it might
19 be more important for her to indicate what those
20 statements were, whether they were statements from
21 Billy Cordova, generally, or statements extracted
22 from the recordings.

23 But the issue with the recordings -- and
24 one of the reasons we basically Brutonized them,
25 even though it's not truly a Bruton problem, is that

1 under Bruton you can't cross-examine those
2 statements. But with Billy Cordova on the stand, he
3 could be cross-examined.

4 So I think that's a different issue when
5 you have information coming from a witness, and
6 that's a witness who can be tested and who can be
7 cross-examined by defense counsel. So I don't think
8 we're even close, based on that.

9 THE COURT: Any further thoughts on that,
10 Ms. Jacks?

11 MS. JACKS: Well, yeah, because I think it
12 would be ridiculous for a lawyer representing Mr.
13 Sanchez to cross-examine a witness about testimony
14 that the Court has instructed the jury is
15 inadmissible against Mr. Sanchez. So I -- I think
16 there is a disconnect as to what is going on here in
17 this trial.

18 And the other thing I would point out is
19 the declarant -- the declarant is not Billy Cordova.
20 The declarant was, in the statements I'm thinking
21 about, Mr. Perez. And I was actually -- there is, I
22 think, the most blatant example of what I'm calling
23 the Government's bait and switch occurred at the end
24 of the day on Thursday. And if I can just grab my
25 computer, I'll read the testimony.

1 By my recollection, they not only -- they
2 not only ended the day Thursday with it, but they
3 started the day Friday with it. And it's going to
4 take me a minute to find it, so I'm not going to
5 stand up here. I'll provide the cites to the Court
6 from the real-time transcripts.

7 THE COURT: Okay. I'll take a look at
8 them.

9 Well, I think we have handled the ones on
10 the transcript. I mean, we worked very hard, and I
11 ruled on every objection that was made to the
12 transcripts. I tried very hard to make sure that
13 the Government lived up to its commitment to
14 Brutonize those transcript statements.

15 So I feel that I've done everything I said
16 I would do, and the Government has said what they
17 said they would do, and then I made them do more.
18 So I think on the transcripts, we're pretty safe.

19 As far as the testimony of Mr. Cordova,
20 every time he was trying to testify what Mr. Perez
21 said, and there was any implication, I did the same
22 thing, I applied the agreement on the Brutonization
23 really to the testimony here, which was beyond what
24 the agreement was. So every time there was a
25 request for a limiting instruction as to what Mr.

1 Perez was saying to Mr. Cordova, the instruction was
2 given. And I think there were times when I just
3 sustained the objection and said it couldn't come
4 in, because we couldn't kind of Brutonize it like we
5 could a transcript or an audio. So I think great
6 effort was made.

7 If there is a statement or two that got
8 through, I'm quite willing -- and I bet the
9 Government would agree with me, that we can give a
10 limiting instruction that they not consider certain
11 testimony. But I'm not sitting here thinking of
12 things that slipped through. But I'd be glad to
13 look at whatever transcripts you have. Show it to
14 the Government; if there is a way we can say
15 something to the effect of: "Any statement that Mr.
16 Perez made through Mr. Cordova cannot be considered
17 against Mr. Sanchez," I'm willing to go the extra
18 length on this to try to make sure that there is no
19 prejudice. But I think we've done a good job.

20 And there is a lot of testimony. We're in
21 our fifth (sic) week, here, and a lot of testimony
22 out there. But I think we've done a pretty good job
23 of keeping the record clean. And I can -- with the
24 closing instructions, I can make more effort, if
25 that's necessary and appropriate.

1 So I'm going to deny the motion to sever
2 at the present time, and we'll take a look at any
3 particular transcripts that come up.

4 MS. JACKS: Your Honor, I did find the
5 cite. I was looking at the wrong transcript.

6 THE COURT: All right, that's fine, go
7 ahead.

8 MS. JACKS: So what I'm looking at is the
9 end of the day on Thursday, and it's at the
10 real-time transcript, page 256, beginning at line
11 16 -- or line 15. And what happened -- and this
12 occurred repeatedly -- I think this is just one of
13 the more egregious examples -- but what happened is
14 Mr. Castellano played a clip of a portion of a
15 conversation between Billy Cordova and Rudy Perez,
16 and then he asked the witness to interpret what was
17 discussed, and he asked, question: "Okay, who is
18 supposed to dispose of what?"

19 And the answer by Mr. Cordova,
20 interpreting the conversation with Rudy Perez, was
21 answer: "Dan Dan was supposed to dispose of the
22 shanks after the Molina murder, and Blue and him
23 were having a confrontation over that."

24 And then I don't have the real-time from
25 Friday morning downloaded yet, but I believe that

1 then on Friday morning that same conversation was
2 then again directly inquired into. And once again,
3 Billy Cordova was asked to interpret what Mr. Perez
4 was saying. And again, the interpretation directly
5 implicated Mr. Sanchez.

6 And what I'm saying is that is a backdoor
7 run-around of what the Government said they were
8 going to do with respect to these conversations
9 which were admissible only against Mr. Perez.

10 And I think it only highlights the tension
11 and the problems with what this Court has proposed
12 to do, which is try to limit that testimony, and
13 have it -- have the jury not use it against Mr.
14 Sanchez. I think at the present time it is an
15 impossible task.

16 I think the skunk has been thrown into the
17 jury box.

18 THE COURT: Well, if it's just these
19 transcripts, why don't you, Mr. Beck, get with Ms.
20 Jacks and see if you can isolate it, and maybe we
21 can put it in a jury instruction. And if the
22 Government doesn't have any objection, I can add it
23 as a limiting instruction that these particular
24 things -- Mr. Cordova was, you know, was difficult
25 to control, because he would often be asked one

1 question and would maybe answer it and then go
2 further.

3 But a couple of these that Mr. Perez is
4 stating, just under the rules of evidence, should
5 not be used against someone else. And so I'd be
6 inclined to give further limiting instructions on
7 that.

8 Your thoughts?

9 MR. BECK: I'll look at it and consider
10 it. I think -- I think this all started because the
11 Court was concerned about the damage of the
12 transcripts referencing a co-defendants' name, and
13 the transcripts don't do that.

14 Mr. Cordova's testimony about what he took
15 that to mean is his opinion. And it also -- I mean,
16 several other witnesses testified to the exact same
17 thing, so -- we took it out of the transcripts
18 because of the prejudice of it being in the recorded
19 conversations in the transcripts. That prejudice is
20 certainly lessened to a great extent when it comes
21 from the witness's mouth, as it did from Billy
22 Cordova, but as it did from several others.

23 THE COURT: But if Mr. Cordova is just
24 relaying a conversation -- his impression of a
25 conversation with Mr. Perez, I don't think you

1 necessarily have a testimonial problem under the
2 Constitution. But you do have an evidentiary
3 problem that it's a statement that Mr. Perez is the
4 party opponent, not Mr. Sanchez.

5 MR. BECK: Right.

6 THE COURT: So get with her, get the
7 statements. Let's look at them, see if we can put
8 an instruction together, because the jury shouldn't
9 be considering party opponent statements against
10 other defendants. That would be my concern.

11 So I'm putting it more in my language than
12 maybe Ms. Jacks'. But I think we get to the same
13 point.

14 MR. BECK: And -- and I get that. But
15 I -- I would assume -- and I'll look back at the
16 transcript -- but I would assume that before that
17 recording was played in which that happened, the
18 Court gave the instruction that this is --

19 THE COURT: Well, I think she's not saying
20 that it's the transcript. I feel pretty comfortable
21 with you on the transcript, and she's made her point
22 on the transcript.

23 But I think today she's saying that what
24 happened is, after the transcript was played, which
25 was sanitized, then Mr. Cordova got on and started

1 giving his opinion about what was said. And then
2 he, then, becomes a -- somebody that's now saying
3 what Mr. Perez said. He's on the stand, he can be
4 cross-examined about that. The problem is he, then,
5 began to make some statements that I think maybe he
6 used the word "Mr. Sanchez."

7 So get with Ms. Jacks, find all the
8 statements that she has, and let's put together --
9 let's think about putting a limiting instruction
10 together. Because I think just under the rules of
11 evidence, that cannot be used against Mr. Sanchez.
12 And if we didn't give an instruction at the time,
13 there was no objection at the time, then we can do
14 something in the closing instructions to nail that
15 down.

16 Because I don't think it's a Bruton
17 problem. I don't think it's a confrontational
18 problem. It's not testimonial. What he's saying,
19 because he's on the stand, but as to what Mr. Perez
20 is saying, if he's not going to testify, then it's
21 going to be an out-of-court statement that was being
22 offered for the truth against Mr. Sanchez. And I
23 think we ought to clear that up.

24 All right. Mr. Villa?

25 MR. VILLA: Judge, just quickly. I know

1 you need to read Mr. Beck's motion. It's concerning
2 the medical doctor that defendants want to call.
3 And we're probably going to have to call her
4 tomorrow, the way evidence is going, or maybe
5 Wednesday. But the argument is it's not relevant,
6 in part because the Court made decisions on
7 suppression already.

8 So, obviously, we think it's relevant for
9 two periods of time, the time when the piece was
10 taken from Mr. Perez' walker, and the time when he
11 gave statements to Billy Cordova.

12 And I can have further argument on that.
13 I know the jury is probably getting close to ready.
14 But I'd ask you to look at proposed Jury Instruction
15 Number 15 in the sixth version, and it's Pattern
16 Instruction 1.26, which is the voluntariness of the
17 statements. And in the second paragraph it says,
18 "One of the factors to consider in whether a
19 statement is voluntary is the physical and mental
20 condition of the declarant." So I think that Dr.
21 Brislen's testimony about Mr. Perez' condition at
22 that time is relevant.

23 THE COURT: Well, I haven't read the
24 motion, but I think I know what it's probably going
25 to say, and what it's saying. I agree tentatively

1 that -- that the UJI -- not the UJI, but the Tenth
2 Circuit pattern instructions are quite broad as to
3 the evidence that can come in as to determining
4 voluntariness. And so while I determine
5 constitutional voluntariness, they still get to
6 judge the weight by which to give the evidence.
7 That instruction is quite broad, and includes a lot
8 of factors.

9 So I'd be inclined to think that, if you
10 want to put on some medical testimony -- I've done
11 this with cases off the reservation, where we're
12 dealing with mental capacity. Obviously, the
13 psychiatrist or doctor can't come on the stand say,
14 "He was credible that day and not credible today,"
15 or something like that. But he can talk about the
16 psychological conditions that plague or hamper the
17 defendant. And I've allowed that testimony. So I'm
18 likening it to that. And my inclination would be
19 that I would allow you to put on your medical
20 expert.

21 MR. VILLA: Sounds good, Your Honor.

22 MR. BECK: And I don't believe they've
23 noticed a psychologist.

24 THE COURT: No, I wasn't saying they were.
25 But I'm likening it to cases off the reservation,

1 where we have a sex offender, or there is an
2 allegation of a sex offense, and they've made a
3 number of statements to the FBI agents or BIA
4 agents. And the psychologist can't come in and say,
5 "Oh, yes, he was not credible that day in making the
6 statements."

7 But I do allow the doctor to come in and
8 say, "Well, he had bipolar, or suffered depression,"
9 or something like that. So the jury does get some
10 sense as to his mental condition. And so likening
11 it to that, there is constitutional voluntariness,
12 and then there is factual voluntariness. And I
13 think it may go to the factors that the Tenth
14 Circuit pattern instructions allow the jury to
15 consider in determining how much weight to give to
16 the defendant's statements.

17 MR. VILLA: And we certainly don't intend
18 to elicit any opinions about the voluntariness of
19 the statement. It's simply what his medical state
20 was at the time, as well as his medical state at the
21 time of March 7, 2014.

22 You'll see the Government's arguments with
23 respect to that concerning duress, and that sort of
24 thing. One of the things that came up with Mr.
25 Cordova was I asked him about Mr. Perez' physical

1 state at the time, March 7, when, you know, the
2 walker pieces were taken, and whether he was capable
3 of physically stopping somebody from doing that or
4 physically defending himself. And Mr. Cordova said,
5 yes.

6 And I think that Dr. Brislen's testimony
7 about Mr. Perez' medical state at that time is also
8 relevant.

9 THE COURT: Well, I've noted that you've
10 been careful and diligent in trying to lay the
11 groundwork to his medical health being at issue
12 here. And so I'm inclined to allow the testimony.

13 All right. Ready to go?

14 All rise.

15 (The jury entered the courtroom.)

16 THE COURT: Well, good morning, ladies and
17 gentlemen. I appreciate you being back and ready to
18 go on time. I know 30 minutes isn't a lot, but I
19 hope it was of some help to you in getting back here
20 on Monday morning.

21 We've been in here for a while, so we may
22 take what looks like an early break to you, but
23 we've been in here working, and the counsel and the
24 parties have been great about being here and trying
25 to work very diligently. They worked over the

1 weekend on some stuff.

2 So everybody has worked very hard and I
3 appreciate it, and I appreciate the counsel and the
4 parties, and especially appreciate the jury. I
5 think we all just have marveled at the way you've
6 gone about your task and what a great group you've
7 been.

8 So I got in and out of Yale and back. So
9 I did my little bit of traveling. My wife and I
10 have been part of a scholarship fund for many years,
11 even before I was a lawyer, and now you look up one
12 day, and you're the oldest board member on there.
13 So this was an occurrence for me. But it's been
14 something that we've done for many years.

15 So it was good to be back on campus and
16 see it. There was a lot of rain. And my boys found
17 a place in Queens, so I had barbecue with them and
18 got back. So it was a good weekend for me, and I
19 hope it was a good weekend for you.

20 All right. We didn't discuss before we
21 came in, but the defendants have their next witness
22 and evidence, and who they're going to call.

23 Mr. Lowry?

24 MR. LOWRY: We do, Your Honor. The
25 defense would like to call Tim Bryan to the stand.

1 THE COURT: All right.

2 Mr. Bryan, if you'll come up and stand
3 next to the witness box, my courtroom deputy, Ms.
4 Standridge, will swear you in.

5 TIM BRYAN,
6 after having been first duly sworn under oath,
7 was questioned, and testified as follows:

8 THE CLERK: State and spell your name for
9 the record.

10 THE WITNESS: My name is Tim Bryan.
11 T-I-M; last name, B-R-Y-A-N.

12 THE COURT: Mr. Bryan.

13 Mr. Lowry?

14 MR. LOWRY: May it please the Court?

15 THE COURT: Mr. Lowry.

16 DIRECT EXAMINATION

17 BY MR. LOWRY:

18 Q. Good morning, Mr. Bryan.

19 A. Good morning.

20 Q. How are you employed?

21 A. I'm a partner at Crowe Horwath, LLP.

22 Q. And how long have you held that position
23 as a partner at Crowe Horwath?

24 A. Approximately one year.

25 Q. And did you work with Crowe Horwath before

1 you became a partner?

2 A. Yes, I did.

3 Q. For how long?

4 A. Since approximately 2011.

5 Q. And what field are you employed in with
6 Crowe Horwath?

7 A. Crowe Horwath is an accounting CPA firm,
8 and I personally am in the investigation practice.

9 Q. And what is your specialty within that
10 practice?

11 A. I lead our national practice around
12 forensic technology, which includes computer
13 forensics investigations, E discovery, litigation
14 support.

15 Q. So I want to back up and talk about that
16 field. What kind of education did you have to get
17 to qualify to work in that field?

18 A. My formal education from the university is
19 a Bachelor's of Science Degree with an accounting
20 emphasis, with a minor in computer science.

21 Q. And after you obtained your degree, what
22 other training did you accomplish to forward your
23 career plans?

24 A. Sure. Well, I -- I'm a Certified Public
25 Accountant, so I've sat for that exam. Also

1 obtained a few other certifications related to
2 financial forensics, as well as related to digital
3 forensics itself, and have a certification called NK
4 Certified Examiner, which is specifically related to
5 computer forensics.

6 Q. Have you published in the field of
7 computer forensics?

8 A. Yes, I have.

9 Q. And could you describe for the jury what
10 those publications entailed?

11 A. Yes. I've prepared and written many
12 articles -- many publications that have been
13 published in various law journals, law publications.

14 Q. And have you also lectured in the area of
15 computer forensic science or forensic technological
16 services?

17 A. Yes, I have.

18 Q. And what kind of audiences would you
19 lecture to?

20 A. Oftentimes it's for attorneys for
21 Continuing Education, CLE for attorneys. I have
22 also presented at peer conferences, so conferences
23 for computer forensics about the latest techniques,
24 latest technology.

25 Q. Now, since your graduation, have you

1 devoted your career to the forensic technological
2 services and computer forensic sciences?

3 A. Not completely.

4 Q. Okay. How much of your career has been
5 devoted to that?

6 A. From about 2000 to 2003, I was doing more
7 along the lines of technology auditing. From 2003
8 to 2005, is when I began computer forensics
9 investigations. And since 2005, has been fully
10 dedicated to doing investigations.

11 Q. What types of investigations have you been
12 involved with that specialize in your forensic
13 technological services?

14 A. Really, it's been anything. I've worked
15 in assisting prosecution. I've worked in defense
16 cases. I've worked on behalf of plaintiffs. Quite
17 a variety of cases. Anything that involves evidence
18 that exists on some sort of digital or technical
19 device, whether it be a computer, a cloud service, a
20 phone, something along that lines.

21 Q. Would that include servers or all manner
22 of electronically digitally-stored material, or
23 information, rather?

24 A. Yes, it would.

25 Q. How many times can you estimate that

1 you've been qualified as an expert in the field?

2 A. I would estimate I've been disclosed as an
3 expert hundreds of times.

4 Q. Have you been qualified by a Court as an
5 expert?

6 A. Yes, I have.

7 MR. LOWRY: At this time, Your Honor, we'd
8 tender Tim Bryan as an expert in the field of
9 Computer Forensic Science and Forensic Technological
10 Services.

11 THE COURT: All right. Any objection, Mr.
12 Beck?

13 MR. BECK: No objection.

14 THE COURT: All right. The Court will
15 allow Mr. Bryan to offer opinion testimony in the
16 field of Computer Forensics and Forensic
17 Technological Services.

18 BY MR. LOWRY:

19 Q. Mr. Bryan, how did you become involved in
20 this case?

21 A. I was contacted by Amy Sirignano, who is
22 an attorney for, I believe, a defendant in this
23 case.

24 Q. And since then, have you worked with other
25 defense attorneys involved in this case?

1 A. I have, yes.

2 Q. And at some point in your work with
3 them -- well, let me back up for a second. You're
4 an expert in computer forensic science; correct?

5 A. Yes.

6 Q. I take it you get paid for your work?

7 A. Yes, I do.

8 Q. Could you describe for the jury your
9 hourly rate and who it is that you bill for your
10 services?

11 A. Sure. So in the world of consulting and
12 expert services work, we work by the hour. And so
13 we often provide estimates of what it would take to
14 conduct an investigation. We have different staff
15 and different levels of experience. So our hourly
16 rates range anywhere from \$250 an hour to in excess
17 of \$500 an hour.

18 Q. And are you familiar with how many hours
19 you've billed in this case?

20 A. Roughly 100 hours since inception of
21 working in this case.

22 Q. And what do you think to date your total
23 invoice would be for the work performed from
24 beginning to the present day?

25 A. We've currently invoiced approximately

1 \$25,000.

2 Q. Okay. And how does that fare compared to
3 your annual, I guess, net for the types of services
4 you provide for Crowe Horwath?

5 A. I mean, it's certainly less than one
6 percent of what we would do in a given year.

7 Q. And what would your revenue be for a given
8 year, roughly?

9 A. Millions of dollars in a year.

10 Q. Okay. So let's talk about the work that
11 you did in this case. At some point you were sent
12 five Dell tablets to analyze?

13 A. Yes. I received a shipment of five
14 tablets.

15 Q. And those five tablets were very similar,
16 if not identical, to this?

17 A. It looked very similar. If it's a Dell --
18 I believe they were Dell tablets.

19 MR. LOWRY: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MR. LOWRY:

22 Q. Was this a make and model of tablet you
23 received?

24 A. Yes, very similar to that.

25 Q. And what services were you asked to

1 perform on the five tablets that you received?

2 A. The initial request from defense counsel
3 was to do what we call a triage of those tablets.
4 So we start by actually making a -- what's called a
5 bit-by-bit or forensic image, so we never actually
6 work on the original so as to not tamper with any
7 potential evidence. So we make a copy,
8 forensically, and confirm that that copy is an exact
9 duplicate of the original. And then I was asked to
10 provide an overview of what we saw, what kind of
11 information was contained on the tablets, and then
12 awaited further instructions.

13 Q. And your initial -- what did your initial
14 overview reveal about the usage of these five
15 tablets?

16 A. Well, number one, I was a little surprised
17 there really was no content of what I was expecting
18 to see. I was expecting to see some PDF documents
19 or files related to this particular case on these
20 five tablets, and I did not see any of that.

21 But I did find that games had been loaded,
22 I found a lot of internet history, I found a lot of
23 like Facebook messaging, Facebook activity, email
24 activity, and a lot of web browsing activity.

25 Q. Is it fair to say from your conversations

1 with counsel that you understood that these tablets
2 were supposed to have the discovery related to this
3 criminal case loaded on them?

4 A. Yes, that was my understanding.

5 Q. And did you find any of that type of
6 material at all?

7 A. I did not.

8 Q. Did you -- were you able to observe that
9 the tablets had been used to connect to the
10 internet?

11 A. Yes, they had been.

12 Q. And was that something you had expected to
13 see with tablets that were given to people who were
14 incarcerated?

15 A. No. In my experience, when an individual
16 is incarcerated, they do not have access to the
17 internet or to Wi-Fi on tablets.

18 Q. Could you identify the source of the
19 internet that was used, or the -- I guess the portal
20 that allowed these tablets to access the internet?

21 A. Yes, I did.

22 Q. And what was that?

23 A. So any web access using a Wi-Fi, there's
24 something called an SSID, and it's really the name
25 of the connection that you're going to use. So, for

1 example, at your home, you might have your browser
2 or your internet router has a name, and that's what
3 you connect to. And in this case it connected --
4 these tablets were connected to an SSID called
5 Walmart.

6 Q. And I take it Walmart is not your typical
7 county jail?

8 A. No.

9 Q. What was the date range, if you recall,
10 that these tablets had been used to connect to the
11 internet, roughly?

12 A. They were roughly connected -- I mean,
13 each of them are a little bit different. But
14 roughly February of '17, some of them March of '17,
15 and continued roughly to April of 2017.

16 Q. And then you talked about this briefly,
17 but what could you tell that the tablets had been
18 used for on the internet?

19 A. There was -- the most common internet
20 browsing that I saw was pornography.

21 Q. Were there other uses that were less
22 prevalent with the tablets?

23 A. There was some web mail, also Gmail; for
24 example, there was some Facebook activity, as well.
25 But a lot of Facebook and a lot of pornography.

1 Q. Did you ask counsel if they wanted a
2 second tier of analysis?

3 A. Yes, I did.

4 Q. And what did the second tier of analysis
5 involve?

6 A. What counsel had asked for, after this
7 initial triage, was to actually provide an
8 overview -- the details of what actual websites were
9 visited, what searches had actually been conducted.
10 So if you were to go to Google and type in a search
11 into Google, and then see the result, and then click
12 on those links, ultimately what was -- what kind of
13 activity related to the web searching had been
14 conducted.

15 Q. In that second tier analysis, were you
16 able to discern whether particular tablets were used
17 to try to gain access to proxy sites?

18 A. Yes. There was one tablet, specifically,
19 that had proxy searching done.

20 Q. Would you explain to the jury what a proxy
21 site is?

22 A. Yeah. Proxy is really a service. It's
23 much like if anyone has ever used a VPN to connect
24 to the internet. Basically, what it does is it's
25 going to obfuscate or make it difficult for the true

1 identity of an individual to be known to the website
2 for which it's visiting.

3 So, for example, every -- every computer,
4 when it connects to the internet, is given what's
5 called an IP address. And if you were to go to,
6 let's say Google, for example, Google would track
7 what IP address the computer that requested the
8 search was.

9 And what these proxy services will do is
10 actually it will be an intermediate stop on its way
11 from your computer to the end website you're trying
12 to go to. And it changes that IP address, so that
13 the website can't track who actually was or what
14 computer or what location was actually conducting
15 that web browsing history or activity. So it's just
16 a way of hiding your true identity.

17 Q. And you used the term in there, and just
18 for us that aren't as familiar with computers as you
19 are, what does an EPN connection mean?

20 A. A VPN.

21 Q. Pardon me?

22 A. Victor. So it's a Virtual Private
23 Network. It basically creates kind of a tunnel, if
24 you will, so nobody can see the activity that's
25 going on during that web browsing session.

1 Q. How many of these five tablets had
2 accessed these proxy sites that you identified?

3 A. There was just one tablet that I could
4 identify that was attempting to use or search for
5 web proxies.

6 Q. And let me back up for a second. When you
7 received the tablets, could you tell -- the tablets
8 were assigned to individuals. Could you tell which
9 tablet was assigned to which individual involved in
10 the case?

11 A. Yes. I received, along with the tablets
12 itself from the FBI directly, and they were
13 accompanied with a device -- with the tablets was a
14 standard chain of custody form. And each tablet
15 also had a label associated or attached to it that
16 indicated who the tablet was assigned to.

17 Q. And I just want to emphasize, those
18 tablets were sent to you directly from the FBI?

19 A. That is correct, yes.

20 Q. So who was assigned to the tablet that had
21 the proxy websites on it?

22 A. Jerry Armenta.

23 Q. And were you able to tell whether that
24 tablet ever successfully engaged proxy sites?

25 A. I was not able to determine if it actually

1 had engaged or had traffic go through a web proxy.

2 MR. LOWRY: May I approach, Your Honor?

3 THE COURT: You may.

4 MR. LOWRY: Your Honor, I'm going to mark
5 for identification purposes Defendant's Exhibit F as
6 in Frank, T as in Thomas.

7 May I approach?

8 THE COURT: You may.

9 BY MR. LOWRY:

10 Q. Mr. Bryan, do you recognize that document?

11 A. Yes, I do.

12 Q. And could you describe it?

13 A. This is a document that I prepared. It's
14 really a subset of web browsing or Google search
15 activity that I was requested to provide the defense
16 counsel.

17 Q. And does this document reflect the
18 attempts to access these proxy websites?

19 A. Yes, it does.

20 Q. And this was the document that was
21 associated with the tablet that was assigned to
22 Jerry Armenta?

23 A. Yes, it was.

24 MR. LOWRY: Your Honor, at this time we'd
25 move for the admission of Defendant's Exhibit FT.

1 THE COURT: Any objection, Mr. Beck?

2 MR. BECK: No objection.

3 THE COURT: All right. How about from any
4 other defendant? Not seeing any objection,
5 Defendants' Exhibit FT will be admitted into
6 evidence.

7 (Defendants' Exhibit FT admitted.)

8 BY MR. LOWRY:

9 Q. Now, looking at the dates of this exhibit,
10 can you tell us, was this -- what stage of the
11 internet use for Mr. Armenta's computer was this?

12 A. This particular subset of searching
13 history shows that the search term -- and you can
14 see the third column says, "Search Term," you can
15 see exactly what was searched by this user, and the
16 date and time for which they searched it. So we're
17 looking at April 4 of 2017, and then it goes through
18 April 8 of 2017.

19 Q. Do you have a sense of when Mr. Armenta
20 was able to access the internet?

21 A. Most of the activity was in April. It did
22 appear that this device was connected to the Wi-Fi
23 Walmart network maybe in March, but most of the web
24 activity was in April.

25 Q. Did any -- you may have answered this, but

1 did any of the other tablets have any attempts to
2 access proxy sites?

3 A. Not that I can locate.

4 Q. Now, in addition to the proxy sites, what
5 other forensic work did you perform in the second
6 tier of your analysis?

7 A. I was also asked to provide a list of --
8 or recover as much of the Google Gmail that I could,
9 as well as a list of all the pornography sites
10 visited.

11 Q. And did the Google and Gmail include
12 social media sites, as well?

13 A. There was some -- yeah, there was some
14 Facebook sites being visited.

15 Q. Anything unusual in the email activity
16 that you could tell?

17 A. No, it was -- I believe just on one or two
18 of the tablets, a pretty small quantity.

19 Q. What was the bulk of the use of the
20 tablets involving?

21 A. Pornography.

22 Q. Now, what type of pornography was
23 associated with this particular tablet, the one that
24 attempted to access the proxy sites?

25 A. That tablet was assigned to, I believe,

1 Jerry Armenta. There was a lot of pornography, and
2 specifically there was a lot of searching for teen
3 pornography.

4 MR. BECK: Objection, Your Honor, hearsay.

5 THE COURT: Well, isn't this on the
6 report?

7 MR. LOWRY: Yes, Your Honor.

8 MR. BECK: It's not on the report that was
9 entered into evidence.

10 THE COURT: Well, if it's not, then,
11 probably sustain that objection and stick with
12 what's on the report.

13 MR. LOWRY: Sure.

14 BY MR. LOWRY:

15 Q. So you did a second tier of analysis?

16 A. Yes.

17 Q. And you documented that second tier in a
18 subset analysis, as well?

19 A. Yes, I did.

20 Q. And you placed that into an Excel
21 spreadsheet format?

22 A. Yes, I did.

23 MR. LOWRY: Your Honor, I'm marking for
24 identification purposes Defendant's Exhibit FU.

25 May I approach, Your Honor?

1 THE COURT: You may.

2 BY MR. LOWRY:

3 Q. Mr. Bryan, without discussing in detail
4 the substance of that -- well, the actual
5 information on that report, can you just give us an
6 overview of the substance of what that report is?

7 A. This is a subset of the Google searches.
8 There were certain terms specifically identified
9 that was contained in this subset, approximately 85
10 pages of searches. Again, that's just a subset of
11 Google searches performed by the tablet assigned to
12 Jerry Armenta.

13 Q. And this was information that you found
14 embedded in the digital guts of that tablet?

15 A. Yes. This directly comes from the search
16 history, the cache, if you will, the C-A-C-H-E,
17 cache, internet history, off that tablet.

18 Q. And this is a document that you created
19 via the mirror image of the tablet that you spoke
20 about earlier?

21 A. Yes. And I moved it into an Excel
22 spreadsheet for ease of -- for all of us to view.

23 MR. LOWRY: Your Honor, at this time, I'd
24 move for the admission of Exhibit FU.

25 THE COURT: Any objection, Mr. Beck?

1 MR. BECK: May we approach?

2 THE COURT: You may.

3 (The following proceedings were held at
4 the bench.)

5 MR. BECK: Your Honor, under the Rule of
6 Completeness, I understand that this exhibit he
7 wants to be offered, but under the Rule of
8 Completeness, I think that the entire search
9 history, at least for Mr. Armenta, should be offered
10 into evidence.

11 THE COURT: Do you have any objection to
12 that?

13 MR. LOWRY: We can do that. We can move
14 the search history for all five tablets into
15 evidence. As I sit here, I don't have all of the
16 search history for Mr. Armenta, in particular. The
17 reason we did this particular exhibit is I'm going
18 to walk through with Mr. Bryan how he attributes the
19 use of this computer to this one particular
20 individual. But I don't have any problem working
21 with the Government to augment the record with a
22 complete set.

23 THE COURT: Are you in agreement, Mr.
24 Beck?

25 MR. BECK: Yes.

1 THE COURT: Everybody else in agreement?
2 So we'll augment it to Defendants' FU, and admit it.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: All right. So Defendants'
6 Exhibit FU will be admitted into evidence.

7 (Defendants' Exhibit FU admitted.)

8 BY MR. LOWRY:

9 Q. Mr. Bryan, based on the overall searches
10 that you've done on all the tablets, would you be
11 able to complete another subset of the usage just
12 pertaining to Mr. Armenta?

13 A. In its entirety?

14 Q. Yes.

15 A. Yes, I could.

16 Q. Okay. So -- but let's focus on this
17 exhibit for the moment.

18 Now that it's been admitted, what kind of
19 internet usage did you see in general with Mr. --
20 this tablet that was assigned to Mr. Armenta?

21 A. Primarily pornography.

22 Q. And what type of pornography?

23 A. There was quite a variety of pornography.
24 This particular exhibit calls out and highlights
25 the -- any pornography related to teen -- searching

1 for teen pornography.

2 Q. Do you have a sense of how many sites
3 Mr. Armenta visited that were related to
4 pornography?

5 A. I don't have the total number of sites
6 visited. But I do know that there were in excess of
7 six --

8 MR. BECK: Objection, Your Honor. I think
9 that that question is improper. I don't think we
10 can say that this is Armenta's search.

11 MR. LOWRY: Sure. Let me back up, Your
12 Honor. I withdraw the question.

13 THE COURT: Okay.

14 BY MR. LOWRY:

15 Q. Do you know how many searches that were
16 related to this particular tablet involved
17 pornography?

18 A. Yes. This tablet assigned to Jerry
19 Armenta had approximately 650 individual searches
20 done that utilized the term "teen" within the search
21 for pornography.

22 Q. And could you give us a sense of what the
23 names of those sites were, just two or three, for
24 example?

25 A. They are fairly vulgar, but if you'd like

1 me to --

2 Q. So everybody knows the genre of material
3 he was searching for. It's not -- as you say, it's
4 not a very polite subject matter, but --

5 A. Teeny Bopper, Camel Toes, Hot Thick Teens,
6 Teen Tits.

7 Q. That's sufficient, Mr. Bryan.

8 In your review of the other four tablets,
9 did any of the other four tablets -- the users of
10 those tablets -- look for teen pornography?

11 A. Not that I could locate.

12 Q. Now, when we're talking about teen
13 pornography, do you have a sense that there are
14 actual teenagers depicted on those websites?

15 A. Maybe I can make a distinction of 18 and
16 19 year-old versus under 18?

17 Q. Sure.

18 A. My professional experience would tell me
19 that there were probably, through using Google
20 searches, that a user would not actually be able to
21 find or be presented through Google, underage or,
22 you know, 18 and under teens.

23 Q. And is that just an artifact of how the
24 internet functions? Or why would that be the case
25 that you'd be unable to actually locate illicit

1 child pornography, if you will?

2 A. There is tools that have been developed in
3 the large technology companies, in particular your
4 Googles and Microsofts, have created some tools
5 specifically to address the issue of exploited
6 individuals -- young individuals.

7 And they have actually created databases
8 and tools to try to limit individuals' ability to be
9 presented results for underage minors. That's
10 primary. There is a couple of different methods in
11 which they do it. But based on my experience, it's
12 a little more difficult than just doing a Google
13 search to actually find these underage images.

14 Q. What kinds of search engines did you see
15 employed with this particular tablet?

16 A. Primarily Internet Explorer, using Bing or
17 using the Google search within Google Chrome.

18 Q. And when you said "Internet Explorer,"
19 what company develops the software for Internet
20 Explorer?

21 A. That comes installed on Windows devices,
22 so it's a Microsoft product.

23 Q. And are you aware of Microsoft's position,
24 in terms of the corporate community, in terms of
25 their role at keeping child pornography off the

1 internet?

2 A. My understanding is they are one of the
3 primary sponsors of the program to keep that
4 information off the internet.

5 Q. So if you're using that type of web
6 interface, it would make it unlikely that you could
7 actually find real child pornography?

8 A. It's possible, but it's unlikely, in my
9 opinion.

10 Q. Okay. Now, are you familiar with the term
11 "attribution" in the field of computer forensic
12 science?

13 A. Yes, I am.

14 Q. Would you explain to the jury what
15 attribution is?

16 A. Sure. Attribution is something that just
17 about every investigation I'm asked to do. And the
18 reason behind that is -- let me educate on the
19 process -- so when these searches were conducted
20 back on -- I'm not certain about the date and time
21 they were conducted, roughly in April of 2017. But
22 I was not there with the individual that was at the
23 keyboard typing these search terms in.

24 So what we often are asked to do, as
25 forensic examiners, is to attribute an activity or

1 attribute some action on the computer to an
2 individual. So in a lot of cases, maybe if it's a
3 fraud case, for example, we might look at web
4 activity and see that an individual maybe logged
5 into their bank account information, and then maybe
6 a minute later, then, they conducted a search that
7 was something like this -- maybe inappropriate.

8 We're trying to attribute the
9 inappropriate search to an individual, say, look,
10 about a minute before, or in the rough timeframe
11 before, an individual just logged onto something
12 that's probably pretty personal to them that they
13 wouldn't share with somebody else. So it's this
14 method of using corroborating activity on a computer
15 to attribute actual activity, even though I was not
16 there. So that is generally the idea behind
17 attribution.

18 Q. And is this exhibit --

19 MR. BECK: Objection, Your Honor, may we
20 approach?

21 THE COURT: You may.

22 (The following proceedings were held at
23 the bench.)

24 MR. BECK: So I anticipate Mr. Bryan is
25 going to talk about attributing certain searches to

1 a certain person on this tablet. And the expert
2 witness notice that I have there says nothing about
3 Tim Bryan testifying about attributing searches to
4 certain individuals. There is nothing about him
5 testifying about the search of tablets.

6 There is mirror image to ascertain all
7 evidence retrieved from the devices, but the devices
8 in this notice are the telephones, specifically from
9 Eric Duran and Mario Montoya.

10 MR. LOWRY: Your Honor, I'm not going to
11 dispute that, but I would point out that the defense
12 asked for these tablets back in May of last year
13 after the breach of the protocol for their usage
14 became apparent. And the Government didn't even
15 make these available until after the trial in this
16 case began. And we had no idea what was there. So
17 we were hitting a moving target. So I won't
18 disagree with Mr. Beck at all, that as a practical
19 matter the Rule 16 notice was filed well in advance
20 of trial didn't contain this information.

21 THE COURT: Let me ask this: Can we do it
22 this way -- and correct me if I'm wrong, but he
23 can't testify that a particular person did the
24 actual search or retrieval of information. He can
25 only say that this computer, whoever was using this

1 computer, this is what they retrieved; correct?

2 MR. LOWRY: Well, correct.

3 THE COURT: So he wasn't there, he doesn't
4 know who was using the computer. Can we just ask
5 generally, whoever was using this equipment, this
6 tablet, this is the information they drew. And
7 would that satisfy your objection?

8 MR. BECK: It wouldn't, Your Honor. And I
9 understand Mr. Lowry's position, and that's why I've
10 allowed the testimony so far on what he retrieved,
11 whether it was mirror image and what it showed,
12 because that's what this notice said he would
13 testify about with regard to the cell phones. So I
14 thought it proper. It does not say anything about
15 attributing particular searches to a particular
16 user. So to the extent that this isn't anywhere in
17 the Rule 16 notice --

18 THE COURT: Can he actually do that?

19 MR. LOWRY: Yes, he can, Your Honor. And
20 that's what he'd walk through right now. And there
21 is a couple of dates -- and one is mid afternoon,
22 like at 1:00 p.m.; one is in the wee hours of the
23 morning when Mr. Armenta would have been locked in
24 his cell.

25 THE COURT: But he can actually say it was

1 Mr. Armenta?

2 MR. LOWRY: He can say in his opinion that
3 an attribution can be fairly made to Mr. Armenta,
4 because there were searches for his ex-wife within
5 minutes of these searches for teen porn.

6 THE COURT: That's in evidence? So he can
7 testify -- that's on the report. So he can go ahead
8 and do that. But let's draw the line. He can't
9 really --

10 MR. LOWRY: He'll admit, if Mr. Beck wants
11 to cross-examine him, he's not sitting at the
12 keyboard looking at who searched it. He'll be frank
13 about that.

14 THE COURT: But can he testify that
15 whoever was using this, these are the searches that
16 he made, this is the information they found? Can we
17 just leave it at that, and not have him draw the
18 conclusion it was Mr. Armenta? We'll leave that to
19 argument.

20 MR. LOWRY: Okay.

21 THE COURT: That comes right close to the
22 line of what they did as far as notice.

23 MR. BECK: All right.

24 THE COURT: Live with that?

25 MR. LOWRY: Have to, Your Honor.

1 THE COURT: I mean, I think you can get a
2 lot out.

3 MR. LOWRY: All right.

4 (The following proceedings were held in
5 open court.)

6 THE COURT: All right.

7 Mr. Lowry?

8 BY MR. LOWRY:

9 Q. So let's back up for a second and talk
10 about the search -- searches that were done on this
11 tablet. Were there certain searches that appear to
12 be personal for an individual?

13 A. Yes, there were.

14 Q. And what did those searches involve?

15 A. Found some searches for some specific
16 cities, some addresses, specific individuals' names
17 that were searched. There were not just generic
18 search terms.

19 Q. And what was one of the names that you saw
20 in the searches?

21 A. There is one that stuck out to me. I
22 believe it was Cheryl Martinez, I believe.

23 Q. And why did that name stick out to you?

24 A. Well, just compared it to all the other
25 search terms, it was a very targeted -- you know, a

1 person's name.

2 Q. Were you aware of Cheryl Martinez'
3 relationship with anyone involved with the tablets?

4 A. My understanding is that Cheryl Martinez
5 may have been a spouse or an ex-spouse of Jerry
6 Armenta.

7 Q. So at what times were searches for that
8 individual made?

9 A. I'd have to refer to the exhibit. My
10 belief is, it was -- let me just look real quick.
11 There is a series of searches conducted for the
12 search term of Cheryl Martinez on April 7, 2017.

13 Q. At what time were those searches done?

14 A. Most of these were done in the 1:00 hour
15 in the afternoon.

16 Q. Now, were there other searches related to
17 teen porn sites that were close in time to those
18 particular searches?

19 A. Yes, there were.

20 Q. And in terms of clock time, what's the
21 difference between a search for, say, Cheryl
22 Martinez, and a search for a teen porn site?

23 A. An example would be there is one within
24 five minutes.

25 Q. Okay. And were there any other examples

1 of that kind of proximity with a personal search and
2 a search for a teen porn site that you're aware of?

3 A. That's the primary. There were some other
4 search terms that were very personal -- that were,
5 again, personal in nature.

6 Q. Were there any searches that were done in
7 the wee hours of the morning similar to that?

8 A. Yes.

9 Q. And again, what would be the time
10 differential between a search for personal
11 information and a teen porn site? And take your
12 time.

13 A. I don't have the exact time,
14 unfortunately, but I do see that there were some
15 searches conducted for like a Rio Rancho, New
16 Mexico, you know, in the 1:00 -- 1:00 a.m. hour time
17 block. But what I don't have is the resulting teen
18 pornography searches. I know they were conducted, I
19 just don't have the exact times on some of them.

20 Q. And again, out of all five tablets, how
21 many had searched terms related to teen pornography?

22 A. Just the tablet assigned to Jerry Armenta.

23 MR. LOWRY: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 BY MR. LOWRY:

2 Q. So, Mr. Bryan, as far as can you tell
3 sitting here, just that one example, I believe, it
4 was on -- when did you say -- the 17th?

5 A. The one example that I highlighted for you
6 was on April 7.

7 Q. April 7?

8 A. 2017. And there may have been others.
9 But this is the one that I can recall right now.

10 Q. Okay.

11 MR. LOWRY: No further questions, Your
12 Honor.

13 THE COURT: All right. Thank you, Mr.
14 Lowry.

15 Any other defendant have direct
16 examination at this time?

17 MS. JACKS: Your Honor, I have a few
18 follow-up.

19 THE COURT: All right.

20 Ms. Jacks?

21 DIRECT EXAMINATION

22 BY MS. JACKS:

23 Q. Good morning, Mr. Bryan.

24 A. Good morning.

25 Q. I just have a few follow-up questions.

1 When was it that you actually received the five
2 computer tablets from the FBI?

3 A. I received these tablets this month. I
4 don't recall the exact date.

5 Q. So February of 2018?

6 A. Yes.

7 Q. And when you got the tablets, you said you
8 had some sort of chain of custody form that was
9 provided?

10 A. Yes.

11 Q. Did it indicate when the tablets had been
12 seized from the five individuals?

13 A. It likely did. I don't recall off the top
14 of my head when it was, but it would have likely
15 contained that.

16 Q. Do you recall, generally, when it
17 indicated the tablets were seized, like was that
18 also in February of 2018, or was it sometime in
19 2017?

20 A. I believe it was 2017.

21 Q. And do you have any recollection of when
22 in 2017?

23 A. I believe it was approximately April of
24 '17, but I don't recall exactly.

25 Q. So between April or when the tablets were

1 seized and February of 2018, those tablets were in
2 the possession of the Federal Bureau of
3 Investigation?

4 A. My understanding is it was either the FBI
5 or maybe the US Marshal Service. I don't recall
6 which had it.

7 Q. But you got the tablets from the FBI?

8 A. I did, directly, yes.

9 Q. And are you familiar with the type of
10 computer forensics analysis that the FBI is capable
11 of performing?

12 A. Yes, I am.

13 Q. And to your knowledge, did the FBI perform
14 any sort of search on the five computer tablets that
15 were sent to you?

16 A. I'm not aware that they did any computer
17 forensics on these tablets.

18 Q. And you said that the tablets, when they
19 were shipped to you, were associated with five
20 different individuals?

21 A. Yes.

22 Q. One of whom was Mr. Armenta?

23 A. Yes.

24 Q. Can you list the other four individuals?

25 A. Yeah. There was Roy Martinez, Ruben

1 Hernandez, Benjamin Clark, and a gentleman named
2 Gerald Archuleta.

3 Q. And did I understand you correctly that
4 all five tablets that you examined forensically
5 showed evidence that they had been used primarily to
6 access pornography?

7 A. There was definitely heavy pornography
8 usage on each -- each of those five tablets, yes.

9 Q. Mr. Lowry asked you some questions about
10 your -- the hours that you spent and the billing in
11 this case. Are all of those hours, and is all of
12 that billing related to this examination of tablets,
13 or did it also relate to other work you were asked
14 to perform by Ms. Sirignano?

15 A. It also related to other work that I was
16 asked to perform.

17 Q. So the work on the tablets is a portion of
18 the amount of work that you've billed for in this
19 case?

20 A. Yes. Approximately a third --

21 Q. Okay.

22 A. -- I would say.

23 Q. You anticipated my next question. I want
24 to follow up about the proxy -- the proxy sites. Is
25 it illegal -- is it a federal crime for somebody to

1 access child pornography?

2 A. I'm not an attorney, but my layman's --

3 MR. BECK: Objection, Your Honor,
4 foundation.

5 THE COURT: Well, if he knows what the
6 federal law is, he can go ahead and say. If he
7 doesn't, then he'll have to say he doesn't know.

8 A. My understanding is yes, it is a crime,
9 federal crime.

10 BY MS. JACKS:

11 Q. And you've been -- well, you're aware that
12 computer forensic experts are frequently hired on
13 cases involving individuals who have accessed child
14 pornography on the internet?

15 A. Yes, I am.

16 Q. And you -- am I understanding you
17 correctly when you're talking about these proxy
18 sites, is a proxy site a way that somebody who wants
19 to access child pornography, but wants to conceal
20 that from the federal government, is that what they
21 would use, or attempt to use?

22 A. It is clearly a method that could be used
23 to conceal the searching for child pornography, yes.

24 Q. Okay. So if -- if I wanted to access
25 child pornography, and I didn't want to get caught,

1 one way I could try to do that is by using a proxy
2 site?

3 A. It's a very rudimentary way, yes, to do
4 it.

5 Q. And you talked about these Google searches
6 involving searches for teenage pornography.

7 First of all, is that -- let me go back
8 for a second, because Mr. Lowry asked you some
9 questions about Google and Internet Explorer. Is it
10 fair to say that Google and Internet Explorer have
11 built-in safeguards so people can't use their sites
12 to access illegal child pornography?

13 A. That is my understanding, yes, they have
14 those safeguards in place.

15 Q. So you could perform the search, but you
16 wouldn't get the return of illegal -- illegal child
17 pornography?

18 A. That's most likely correct, yes.

19 Q. But would you agree that someone that
20 types in, for example, a search of "Teen Camel Toe"
21 is searching -- is an attempt to search for illegal
22 child pornography?

23 MR. BECK: Objection, Your Honor,
24 foundation and relevance.

25 THE COURT: Well, if he can answer it,

1 given his expertise, I'll allow it. Overruled.

2 A. Based on my expertise, I would say that it
3 is an attempt to search for teen or underage
4 pornography.

5 BY MS. JACKS:

6 Q. And maybe an attempt that is somewhat
7 unsophisticated?

8 A. Yes.

9 Q. Because if the person really knew about
10 Google and Internet Explorer, they'd know that they
11 couldn't use those sites to actually access illegal
12 materials?

13 A. That is correct.

14 MS. JACKS: Thank you. I have nothing
15 further.

16 THE COURT: Thank you, Ms. Jacks.

17 Ms. Duncan? Mr. Villa? Did you have
18 something?

19 MR. VILLA: I do, Your Honor, but I think
20 we need to approach before I do that.

21 THE COURT: All right.

22 (The following proceedings were held at
23 the bench.)

24 MR. LOWRY: Your Honor, I want to start
25 out with an apology to the Court. I had represented

1 to the Court and to the United States that I would
2 turn over the reports from Mr. Bryan as soon as I
3 got them. He had turned over two reports for
4 Timothy Martinez and Frederico Munoz during the
5 litigation the Friday before last. And just out of
6 the inadvertence, I completely forgot about it,
7 because those witnesses had already testified, and
8 it never came up.

9 Friday night Ms. Armijo emailed me and
10 said, "Are you sure there are no other reports?" I
11 went back in my email and checked. She was right, I
12 disclosed them to her right away. And given my
13 mistake, I made a personal agreement with Ms. Armijo
14 that I wasn't going to get into those other two
15 tablets. So just a professional mistake.

16 And I apologize to the Court, I apologize
17 to the United States. But I thought I might have
18 had a global agreement. But Mr. Villa wants to
19 raise, I think, an issue with Mr. Bryan, but --

20 THE COURT: Have you had a chance to look
21 at these additional reports?

22 MR. BECK: No. They came in on Friday.

23 MR. LOWRY: I emailed them to Ms. Armijo
24 at 2:00 a.m.

25 MR. VILLA: I don't want to get into the

1 content, but I want to honor Mr. Lowry's agreement.
2 I was aware when he made it.

3 I want to say a couple things. Again,
4 we've been talking about the tablets for a long
5 time, and didn't get them until mid trial. And I
6 want to ask whether he received tablets from Timothy
7 Martinez and Frederico Munoz, without referring to
8 what the content was, so that isn't left hanging.

9 MR. LOWRY: Or just confirm that they had
10 pornography on them. Mr. Timothy Martinez did
11 testify that he used that tablet to access
12 pornography.

13 MR. VILLA: So I don't think we're getting
14 into this agreement that Mr. Lowry had.

15 THE COURT: How lengthy are these reports?

16 MR. VILLA: They are spreadsheets.

17 MR. BECK: I can say based on the fact
18 that we just saw was 770 searches, approximately 84
19 pages. Timothy Martinez is similar. It should be
20 approximately 80, whatever, pages. I believe
21 Frederico Munoz had approximately 50,000 searches.
22 So to do 750 times 100, that would be approximately
23 800 pages and I would say 6/8 of that, we're looking
24 at approximately 500-something pages.

25 THE COURT: Do you have any problem with

1 the two questions that Mr. Villa wants to ask?

2 MR. BECK: If the questions are: Did you
3 receive tablets from Timothy Martinez and Frederico
4 Munoz, if that's the question, I don't have any
5 problem with that.

6 THE COURT: Do you want to ask a second --

7 MR. LOWRY: Could it be confirmed whether
8 they had pornography on them?

9 MR. BECK: I do have a problem with that.

10 THE COURT: Why don't we do this: Why
11 don't you give the Government a chance -- why don't
12 you ask your first question, let's go ahead and get
13 that out there. And then if you want to ask the
14 second question, let's keep him around and you can
15 re-call him and ask the second question.

16 And if Mr. Beck doesn't disagree with it,
17 then, after he's had a chance to look at these two
18 reports, you can ask the second question, and he'll
19 have a chance to look at the reports and either
20 object to it to allow the question to be asked.

21 MR. VILLA: I guess I would suggest -- it
22 sounds like Mr. Beck has the reports, since he was
23 able to recite the number of searches done by
24 Mr. Munoz.

25 THE COURT: Not these two.

1 MR. BECK: No. So I opened them up, and I
2 looked at how many entries there are, to see if it
3 was something I could digest. And I did it just
4 now. And talking about how many tablets were being
5 looked at, I realized there were two others I hadn't
6 looked at.

7 THE COURT: Why don't you go ahead and ask
8 your first question, and then y'all can re-call him,
9 and I'll give the Government a chance to look at
10 them. I'd be inclined to let you ask the second
11 question, but I think I'd like to have the
12 Government look at the reports first, and see if
13 there is something we don't know about here.

14 MR. BECK: I'll also object to getting
15 into whether there was pornography, because both
16 Frederico Munoz and Timothy Martinez admitted that
17 they searched for pornography, admitted they looked
18 at pornography, admitted they compromised their
19 tablet.

20 THE COURT: I don't think they're offering
21 it to impeach, but as substantive evidence. And I
22 let the Government put on a robust case, so I'll let
23 defendants do it, as well.

24 MR. VILLA: What about this question
25 instead, whether he's aware whether Mr. Timothy

1 Martinez and Mr. Munoz admitted to searching for
2 pornography?

3 MR. BECK: That's fine.

4 THE COURT: Why don't you get in and get
5 out, and then we're done with this witness.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: All right. Mr. Villa?

9 MR. VILLA: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. VILLA:

12 Q. Mr. Bryan, I just have a couple follow-up
13 questions. Did you also receive -- without getting
14 into what you did -- did you receive a tablet
15 from -- that was from Timothy Martinez?

16 A. I believe I did, yes.

17 Q. And that was in sort of a second wave of
18 tablets, after the first five?

19 A. Correct.

20 Q. And did you also receive a tablet from --
21 that was from Frederico Munoz, the second wave?

22 A. I believe that is also correct.

23 Q. And are you aware that both of these men
24 have testified that they used their tablets to
25 search for pornography?

1 A. I was not aware of that testimony, no.

2 MR. VILLA: Okay. That's all the
3 questions I have.

4 THE COURT: Thank you, Mr. Villa.

5 Mr. Maynard, Ms. Bhalla, do y'all have any
6 cross-examination -- or direct examination of Mr.
7 Bryan?

8 MS. BHALLA: No, Your Honor.

9 THE COURT: Thank you, Ms. Bhalla.

10 Mr. Beck, do you have cross-examination of
11 Mr. Bryan?

12 MR. BECK: I do, Your Honor.

13 THE COURT: Mr. Beck?

14 CROSS-EXAMINATION

15 BY MR. BECK:

16 Q. Mr. Bryan, I think you said just a few
17 moments ago that you received these tablets in
18 February, I guess, this month; is that right?

19 A. I believe it was February.

20 Q. Had the FBI sent them to you on January
21 30, 2018?

22 A. I don't recall the date they sent them. I
23 believe we received them in early February.

24 Q. So it's possible that they received them
25 January 30, 2018?

1 A. I'd have to look at the chain of custody
2 to those documents.

3 Q. All right, sure. And you said that you
4 don't remember whether they were in US Marshal
5 custody from 2017 to 2018 or FBI custody; is that
6 right?

7 A. I do not recall.

8 Q. Would it refresh your memory if I showed
9 you a receipt for property?

10 A. It could, yes.

11 MR. BECK: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 BY MR. BECK:

15 Q. I'll hand you the receipt of property. Go
16 ahead and review the top and bottom and let me know
17 if that refreshes your recollection where those
18 tablets were kept until January of 2018 -- of this
19 year.

20 A. I've never seen this before, but it does
21 appear as though they were in the US Marshal's
22 custody.

23 Q. So now do you remember that they were in
24 US Marshal custody until January of this year?

25 A. I do.

1 Q. And I just want to make sure I'm clear on
2 your direct testimony. It sounds like you don't
3 think Jerry Armenta, or whoever had his tablet,
4 could have accessed child porn from those searches;
5 is that right?

6 A. From the Google searches directly, I do
7 not believe that that would have been a method,
8 correct.

9 Q. Then I wasn't sure -- I thought you did
10 searches of proxy servers, you testified that on
11 direct; is that right?

12 A. Yes, I did.

13 Q. Did he access those proxy servers?

14 A. It does appear that the searches were
15 conducted to go to those proxy servers, yes.

16 Q. But I guess my question was, did he access
17 those?

18 A. I don't recall if he directly accessed the
19 web proxies in order to conduct subsequent web
20 browsing activity or not. That was not part of my
21 request.

22 Q. So sitting here today, you can't say
23 whether or not he accessed those proxy servers; is
24 that correct?

25 A. That's correct.

1 Q. And, in fact, you can't say definitively
2 that it was actually Jerry Armenta who searched for
3 any of those searches on his tablet, can you?

4 A. I would say, based on my opinion, based on
5 doing this a long time, what I would tell you is --

6 Q. Well, I'm not asking for your opinion,
7 what I was asking for is definitively can you say
8 100% that it was Jerry Armenta who searched on the
9 tablets?

10 A. I can't say by 100%. I can tell you based
11 on the subsequent searches that are conducted for
12 individual names, individual addresses, that that
13 would have likely been Jerry Armenta doing those
14 searches.

15 Q. So I guess my question was definitively.
16 And it sounds like the answer is no.

17 A. With 100% certainty, no.

18 Q. Okay. And then I want to talk to you
19 about exhibit -- and I think I remember the name of
20 this. It was Exhibit FU; is that right?

21 A. It was.

22 THE COURT: Can we take this up after the
23 break, Mr. Beck?

24 MR. BECK: That would be fine, Your Honor.

25 THE COURT: Ms. Bean has been going for a

1 while, so I need to give her a rest. I know the
2 jury has not been in very long, but let's go ahead
3 and take our morning break.

4 All right, we'll be in recess for about 15
5 minutes.

6 (The jury left the courtroom.)

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes.

9 (The Court stood in recess.)

10 MS. DUNCAN: So, Your Honor, I was just --
11 Mr. Baca joins in Mr. Sanchez' motion to sever, and
12 for mistrial on similar grounds raised by Mr.
13 Sanchez. And that was -- although the Court had
14 ordered the Government to redact out mentions of Mr.
15 Baca during particularly Billy Cordova's testimony,
16 reference was made to him, and made to him --
17 references were made in connection to statements
18 that Mr. Perez was making. And, in particular, it
19 was a statement that "Baby G" had told Mr. Perez he
20 didn't need to worry about the rumors, that he was
21 an informant.

22 And Mr. Castellano elicited information --
23 or testimony that Mr. Baca was close to "Baby G," so
24 suggesting to the jury that that came from Mr. Baca,
25 which was in contravention of the Court's order.

1 And also that the testimony that was elicited,
2 particularly the recordings, corroborated some of
3 the informant testimony in a way that was unfair to
4 Mr. Baca, because he could not cross-examine those
5 statements.

6 THE COURT: Well, I'm going to need
7 specifics. So get the specific sites, give the
8 quotes, give me a copy. Ms. Jacks, give me yours.
9 And then work with Mr. Beck, so let's see if we can
10 do a limiting instruction. I'm not quite tracking
11 yours. But I'll take a look at it. But I'm going
12 to need specific stuff.

13 MR. CASTELLANO: I agree, Your Honor,
14 because it came to Baby G, Jonathan Gomez, I didn't
15 reference the transcript when I asked that question
16 to Mr. Cordova. I just said: "Who is Jonathan
17 Gomez, and what's his relationship to Mr. Baca?"
18 And those are facts outside of transcripts.

19 THE COURT: Yeah, but I'm going to need to
20 see the transcript, exactly what it said. So find
21 the hits, work with Mr. Beck, Mr. Castellano. I
22 think Ms. Jacks may have a stronger argument on a
23 couple of them that are, you know, going to be party
24 opponents, but I'm not sure yours are going to
25 qualify. But I'll take a look at them.

1 MS. DUNCAN: And we will do that, Your
2 Honor. Just for the record, we would argue that
3 that is not a sufficient remedy for the error with
4 regard to Mr. Baca, but I will do it.

5 THE COURT: Let's see -- first of all, if
6 there is no objection, it's hard for me to do things
7 if I don't get an objection and ask for limiting
8 instructions. So if you're -- I'm trying to help
9 the defendants, here, by putting together a limiting
10 instruction.

11 But let's see if there is even a problem.
12 So get the material, get it to the Court, and get it
13 also to Mr. Beck.

14 So Ms. Jacks, if you'll give me your exact
15 cites, I'll take a look at those.

16 MS. JACKS: I'm happy to do that. I just
17 want to point out that it was my impression, and I
18 believe Ms. Duncan's impression, that the testimony
19 about the recordings was --

20 THE COURT: Well, let's don't do
21 impressions at this point. I understand the point.
22 Let's get transcript cites, and let's take a look at
23 them.

24 All rise.

25 (The jury entered the courtroom.)

1 THE COURT: All right. Mr. Bryan, I'll
2 remind you that you're still under oath.

3 Mr. Beck, if you wish to continue your
4 cross-examination of Mr. Bryan, you may do at this
5 time.

6 BY MR. BECK:

7 Q. Mr. Bryan, over the course of your work on
8 this case, how many times did you talk to the
9 defense attorneys about your involvement with these
10 tablets?

11 A. I can't give you an exact number, but 10
12 to 12, probably.

13 Q. Is that in person, on the phone, both?

14 A. It was on the phone.

15 Q. Did they alert you when you should expect
16 to receive the tablets?

17 A. I believe they did, yes.

18 Q. And did they tell you what they thought
19 you might find on there?

20 A. No.

21 Q. They didn't tell you to look for searches
22 for pornography?

23 A. No, they asked me to conduct a triage.
24 Based on that triage, they then -- which I
25 identified what the contents of it were -- they then

1 asked for specific additional investigation.

2 Q. All right. Did they tell you that the
3 tablets had been -- I guess you said triage, but did
4 they say compromised or dealt with? What did they
5 tell you about that?

6 A. I believe they indicated that some of them
7 may have been reset, I think was the term they used.

8 Q. And did you find that they'd been reset?

9 A. Yeah. It appears as though they were
10 repurposed or reset from their original purpose of
11 housing discovery.

12 Q. And I think you testified earlier, right,
13 that you didn't expect that they'd be able to access
14 the internet on these?

15 A. I did not, correct.

16 Q. And you also testified you were surprised
17 when they -- when there wasn't, I think you said,
18 discovery or PDFs; is that right?

19 A. Yeah, it's my understanding that was what
20 was supposed to be on them.

21 Q. But, I mean, as a forensics expert, when
22 they reset the tablets to gain internet access,
23 wouldn't you expect all that stuff would be gone?

24 A. I was not clear as to what method they
25 used to do a reset, or if they even needed to do a

1 reset in order to gain access to the internet. So
2 I had no expectation going in.

3 Q. Fair enough.

4 Now, I think you said with Armenta, you
5 performed specific Google searches; is that right?

6 A. Yes, I did.

7 Q. And these were specific terms that Mr.
8 Lowry gave you?

9 A. Yes. There were some specific terms he
10 asked me to search for.

11 Q. And I think when we looked at FU, which I
12 don't have in front of me, that was about -- I think
13 you said 750 -- what did you say, 750 searches you
14 found that corresponded to that?

15 A. Approximately, correct.

16 Q. And I think that did not include 750 --
17 that did not include the 12 searches for proxy;
18 right?

19 A. That is correct. And then there is an
20 additional set of searches, as well, that's not
21 included in FU or FT.

22 Q. Right. Yeah, we'll get to that. So 750,
23 so that's 12, so that's around 762; right?
24 Somewhere approximately? I'm not going to hold you
25 to that exact number.

1 A. Between 750 and 800, I think is a fair
2 number.

3 Q. 750 to 800. All right. Well, if I look
4 through them and I found 758 searches and 12
5 proxies, for a total of 770, would you disagree with
6 that number?

7 A. That's approximately correct, yes.

8 MR. BECK: So now, I'm going to -- the
9 United States will move to admit Government's
10 Exhibit 781, which I've discussed with counsel,
11 which is the search -- which is the total searches
12 for the tablet that belonged to Jerry Armenta.

13 THE COURT: Any objection to that, Mr.
14 Lowry?

15 MR. LOWRY: No, Your Honor.

16 THE COURT: Anybody else have any
17 objection? Not hearing or seeing any objection,
18 Government's Exhibit 781 will be admitted into
19 evidence.

20 (Government Exhibit 781 admitted.)

21 BY MR. BECK:

22 Q. And I know you didn't prepare this, but
23 you did prepare a spreadsheet in Excel that
24 contained all of the searches from all of the
25 tablets; is that right?

1 A. Yes, I did.

2 Q. And so for this, what we did was we
3 searched through that Excel spreadsheet and found
4 all the searches for the tablet that was identified
5 as belonging to Jerry Armenta. And you and I sort
6 of discussed how to do that; right?

7 A. Correct.

8 Q. And now I'm going to show you what's at
9 the end -- I don't know how quick or how long this
10 will be -- but at the end of Jerry Armenta's
11 searches.

12 And so it looks to me like judging on the
13 Excel spreadsheet that you provided us, there were
14 about 2,223 searches; right?

15 A. Yes, there were 2,223 searches conducted
16 using the Google browser -- the Google search tool
17 on Jerry Armenta's tablet computer that we were able
18 to recover.

19 Q. Okay. Great.

20 And to be fair, all these Google searches,
21 all the information you got from these tablets, I
22 think you said they ended in April; right?

23 A. Yes.

24 Q. And that's when the Government found out
25 about them using their tablets for nefarious

1 reasons; right?

2 A. That I don't know.

3 Q. Okay. Fair enough. So I'm going to do
4 some math here, and I'm not good at this either, so
5 I'm going to use my handy-dandy calculator. But you
6 said there is about 770 searches for either proxy
7 or based on the terms that Mr. Lowry gave you;
8 right?

9 A. Correct.

10 Q. So I'm going to do 770 divided by -- I
11 think we saw there were about 2,223 searches total;
12 right?

13 A. Yes.

14 Q. And so that -- we get .346, which is about
15 34.6 percent; would you agree with me on that?

16 A. I would agree.

17 Q. And so that's about one-third of all the
18 searches; is that right?

19 A. Yes, one third of all the searches would
20 be contained in FU and FT.

21 Q. Okay. And so that means that two-thirds
22 of the searches didn't respond to anything that Mr.
23 Lowry asked you to search for; is that right?

24 A. That is correct. And I guess maybe I can
25 explain what those searches were.

1 Q. I think you'll probably have an
2 opportunity to do that. So I won't ask you about
3 that. And the -- I just want to go into -- well --

4 MR. BECK: May I have a moment, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. BECK:

8 Q. I think you said with Ms. Jacks that the
9 FBI didn't do any forensic examination of these
10 tablets; right?

11 A. That's what I was told.

12 Q. But again, you just -- we talked about the
13 FBI only received them from the US Marshal service
14 in January of this year; right?

15 A. That's what that document showed, yes.

16 Q. Okay. And did you know that -- did you
17 know that there was a court order in place that
18 prohibited anyone except for the person to whom the
19 tablets were registered from actually accessing
20 those tablets?

21 A. No.

22 MR. BECK: Nothing further, Your Honor.

23 THE COURT: All right. Thank you, Mr.
24 Beck.

25 Defendants have redirect of Mr. Bryan?

1 Mr. Lowry?

2 REDIRECT EXAMINATION

3 BY MR. LOWRY:

4 Q. Good morning.

5 A. Good morning.

6 Q. Mr. Beck asked you if you could be 100%
7 certain that Mr. Armijo was operating the tablet at
8 the time the teen searches were performed, didn't
9 he?

10 A. Yes, he did.

11 Q. In your professional opinion, how certain
12 are you that Mr. Armenta performed those searches?

13 A. I am more certain than not that Mr.
14 Armenta, based on my understanding of Cheryl
15 Martinez, based on my understanding of some of the
16 addresses, and the relationship of those addresses
17 to Mr. Armenta and former family members, former
18 spouses, that he would have been the one to conduct
19 those searches.

20 So I'm certainly more certain than not
21 that he also conducted these other searches that
22 are, at a minimum, in close proximity to the dates
23 and times in which he searched more personal items.

24 Q. And based on the search terms that were
25 used -- and you described a few of those like -- and

1 I'm begging the pardon of the Court, but we're
2 talking Young Teenage Camel Toes and Young Teen. Do
3 you think that the person performing those searches
4 had a desire to locate child pornography?

5 A. I can say solely based on the search term,
6 that why would you use those search terms unless you
7 were looking for it?

8 Q. Now, I want to move on. Mr. Beck talked
9 about the 2,223 searches. Was there a particular
10 search that encompassed the vast majority of
11 those -- well, the significant amount of the
12 searches that were done?

13 A. Yeah, I would say that pornography, in
14 general, was the majority of them.

15 Q. And there was another search term used,
16 "Hecho in Mexico?"

17 A. Yes, there was, I believe, a search for a
18 logo. I think the search term was "Hecho in Mexico"
19 logo. That was a large portion.

20 Q. If you took away that search for the
21 "Hecho in Mexico," what percentage of the remainder
22 would be child pornography, do you think?

23 MR. BECK: Objection, Your Honor,
24 speculation.

25 THE COURT: Well, if he can give a

1 percentage, he can state it. If he can't, he'll
2 have to say he can't do it.

3 A. I can't give you a precise percentage, but
4 I'd say the majority.

5 BY MR. LOWRY:

6 Q. In terms of the five tablets that we
7 talked about, do you have a sense of how many images
8 were on the tablets, in general?

9 A. There were thousands of images. There
10 were, in particular, like in Facebook, for example,
11 there were over 10,000 Facebook images across those
12 five tablets that I examined.

13 Q. And of the images you looked at, how many
14 were related to pornography?

15 A. Almost all of them.

16 MR. LOWRY: No further questions, Your
17 Honor.

18 THE COURT: Thank you, Mr. Lowry.

19 Anyone else on the defendants' side have
20 redirect?

21 All right. Mr. Bryan, you may step down.
22 Thank you for your testimony.

23 All right. Do the defendants have their
24 next witness or evidence?

25 MS. DUNCAN: Yes, Your Honor. The defense

1 calls Edward Urtiaga.

2 THE COURT: Mr. Urtiaga, if you'll come up
3 and next to the witness box on my right, your left.
4 Before you're seated, my courtroom deputy, Ms.
5 Standridge, will swear you in.

6 EDWARD URTIAGA,
7 after having been first duly sworn under oath,
8 was questioned, and testified as follows:

9 THE CLERK: State and spell your name for
10 the record.

11 THE WITNESS: My name is Edward Urtiaga,
12 U-R-T-I-A-G-A.

13 THE COURT: Mr. Urtiaga.
14 Ms. Duncan?

15 MS. DUNCAN: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. DUNCAN:

18 Q. Good morning, Mr. Urtiaga.

19 A. Good morning, ma'am.

20 Q. Mr. Urtiaga, where were you employed in
21 February of 2015?

22 A. New Mexico Corrections Department.

23 Q. And what was your position in the New
24 Mexico Corrections Department?

25 A. At the time, a sergeant.

1 Q. How long had you worked for the Department
2 of Corrections in 2015?

3 A. Probably about nine years, approximately
4 nine years at that time.

5 Q. So when did you start working for the
6 Department of Corrections?

7 A. 2006, February.

8 Q. And so beginning in February 2006, what
9 positions have you held within the department?

10 A. I've been a correctional officer, I've
11 worked in the gang unit for approximately two years.
12 I was a sergeant, and I'm currently a lieutenant.

13 Q. You said you worked in the gang unit. Is
14 that known by another name?

15 A. STIU, Security Threat Intelligence Unit.

16 Q. So I'd like to talk to you about an
17 incident that occurred on February 18, 2015. Do you
18 know a man by the name of Eric Duran?

19 A. Yes, ma'am.

20 Q. And did you have a run-in with Mr. Duran
21 on February 18, 2015?

22 A. Yes.

23 Q. So can you tell us, how did that come
24 about?

25 A. I was doing shakedowns with the shakedown

1 crew. And I had found pieces of metal missing from
2 their light plates, so the inmates were placed on
3 PHD in X pod at the time. And they had all been put
4 in there -- there were missing pieces of metal from
5 their light plates.

6 Q. So let me back up and ask you a few
7 things.

8 A. Yes.

9 Q. So you said that you all had done a
10 shakedown and found pieces -- metal pieces missing
11 from inmates' cells; is that correct?

12 A. Yes, ma'am.

13 Q. Do you recall who those inmates were?

14 A. Eric Duran, Robert Martinez, Roy Martinez,
15 I believe. I don't remember the rest, ma'am.

16 Q. Then you said, as a result of Corrections
17 finding those pieces of metal, they were put on PHD;
18 is that correct?

19 A. Yes. At that time we didn't find the
20 piece of metal. We just knew they were missing. So
21 the inmates were placed on PHD.

22 Q. What is PHD?

23 A. Prehearing detention.

24 Q. And what does prehearing detention entail?

25 A. The department puts inmates on PHD, I mean

1 if they're -- they're kind of pending investigation,
2 kind of in limbo, I guess you would say. Their
3 property is taken, and stuff like that.

4 Q. And you said that this happened in X pod;
5 is that correct?

6 A. Where the metal was missing?

7 Q. Yes.

8 A. I don't recall. They were in different
9 pods, these inmates at the time. They were moved to
10 X pod.

11 Q. And X pod, is that -- where is that
12 located?

13 A. In Housing Unit 3B at the North facility.

14 Q. And that is at the Penitentiary of New
15 Mexico?

16 A. Yes, ma'am.

17 Q. Is it also known as Level 6?

18 A. At the time it was, yes, ma'am.

19 Q. Okay. So these inmates were in prehearing
20 detention when you encountered Mr. Duran. So why
21 did you have an interaction with Mr. Duran?

22 A. The inmates were placed on PHD and none of
23 their property was taken. I was a sergeant. I had
24 to do go in there and take their property. It
25 wasn't done, it should have been done. Eric Duran

1 was mad because -- I mean, I enforce the rules
2 there. He was mad at me. And --

3 Q. And so at that point, did Mr. Duran make
4 any threats against you?

5 A. Yes, ma'am.

6 Q. What did he say to you?

7 A. I mean, he said a bunch of things. He
8 said that he knew where I lived. He had told me my
9 address in front of other SNM members in that pod,
10 my license plate number on my car, told me he was
11 going to kill me. And the SNM, anyway, the whole
12 SNM, that they were going to get me.

13 Q. So you said that he told you your address.
14 And did he tell you your correct address at that
15 time?

16 A. Yes, at the time, yes.

17 Q. And did he also describe your license
18 plate number? Did he say your correct license plate
19 number at that time?

20 A. Yes. He said the color of my car at the
21 time, also.

22 Q. How did you feel?

23 A. It was scary. I've never --

24 MS. ARMIJO: Objection, relevance.

25 THE COURT: What is the relevance, how he

1 feels about it?

2 MS. DUNCAN: Well, Your Honor, I think
3 what Mr. Urtiaga is going to testify to is that,
4 although he'd been threatened by other inmates in
5 the past, but I think after this incident, what
6 sticks out in his mind is that Eric Duran disclosed
7 his home address and his vehicle information.

8 And so the Government has alleged that
9 Eric Duran just made these threats because he was
10 trying to cover up that he was an informant. This
11 goes beyond that. And this witness can testify how
12 that goes beyond what would you expect just to be a
13 cover-up.

14 THE COURT: Well, I think it has some
15 relevance. Overruled.

16 BY MS. DUNCAN:

17 Q. So how did you feel when Mr. Duran blurted
18 out your home address?

19 A. I was scared, ma'am.

20 Q. And why were you scared?

21 A. I'd never been told that before from
22 inmates. I'd been threatened before, but never my
23 address and stuff like that, my -- a description of
24 my car, my license plate number.

25 Q. How many other inmates were in the pod

1 when Mr. Duran disclosed your address and your
2 license plate number?

3 A. I don't know exactly how many, but there
4 was -- it was all SNM members in good standing at
5 the time. And that's -- you know, it's scary.
6 There were hit men in the pod, SNM hit men also.

7 Q. How many cells are in X pod?

8 A. Twelve.

9 Q. And I think you said that no one had ever
10 blurted out your address or your personal
11 information before Eric Duran?

12 A. Nothing like that.

13 Q. And since then, has anyone ever made that
14 kind of particularized threat to you?

15 A. No.

16 Q. When Mr. Duran was threatening to kill you
17 and telling you he knew where you lived, did he also
18 refer to then Secretary of Corrections, Gregg
19 Marcantel?

20 MS. ARMIJO: Objection, leading.

21 THE COURT: Overruled.

22 A. Yes.

23 BY MS. DUNCAN:

24 Q. And did he tell you, "You're a bitch, just
25 like Marcantel"?

1 A. Yes, ma'am.

2 Q. And at that time, what was the
3 relationship between then Secretary Marcantel and
4 inmates like Eric Duran?

5 A. They didn't --

6 MS. ARMIJO: Objection, foundation.

7 THE COURT: Well, lay some foundation as
8 to whether he knows.

9 MS. DUNCAN: Sure.

10 BY MS. DUNCAN:

11 Q. Are you aware of the relationship between
12 inmates like Eric Duran and then Secretary Marcantel
13 at that time in 2015?

14 A. Somewhat, of what I saw.

15 Q. If you could tell us, then, what you
16 observed of the relationship?

17 MS. ARMIJO: Objection, foundation. He
18 wasn't in STIU at the time. He was a correctional
19 officer. And he said somewhat, from what he could
20 see.

21 THE COURT: Well, if he can relate what he
22 saw, he can relate what he saw. Overruled.

23 A. Well, Marcantel used to go talk to the
24 SNMers. He used to go to the pods and actually talk
25 to them in the pods.

1 BY MS. DUNCAN:

2 Q. This was in 2015?

3 A. Yes.

4 Q. And how would they react when Mr.
5 Marcantel would come into the pod?

6 A. They didn't like him at all.

7 Q. Did that include Eric Duran?

8 A. Yes.

9 Q. And do you know if Eric Duran was ever
10 disciplined for the threat he made against you?

11 A. No.

12 Q. You don't know or he wasn't?

13 A. I don't know if he was disciplined. I
14 don't know if he was disciplined. I mean, from what
15 the --

16 MS. ARMIJO: Objection, there is no
17 question before the witness.

18 THE COURT: Overruled. If Ms. Duncan
19 wants to solicit further, she can.

20 BY MS. DUNCAN:

21 Q. Do you know when -- in the Department of
22 Corrections, is a threat against the life of a
23 correctional officer taken seriously?

24 A. Yes.

25 Q. And would you expect if an inmate had

1 threatened to kill a correctional officer and
2 disclosed personal information, that that inmate
3 would be disciplined?

4 A. Yes.

5 Q. Did you observe any evidence that
6 Mr. Duran suffered consequences for the threat he
7 made against you?

8 A. No.

9 Q. Now, after Mr. Duran threatened your life,
10 did you write a report to the administration
11 documenting that threat?

12 A. Yes, ma'am.

13 Q. Do you write reports every time an inmate
14 threatens you?

15 A. No.

16 Q. Is there a reason why you documented this
17 one?

18 A. Because it stood out. I took it serious.

19 Q. And why did it stand out?

20 A. He told me my address. And I have a son.
21 I was scared. I have a family.

22 Q. Did you write your report the same day
23 that Eric Duran made those threats against you?

24 A. Yes, ma'am.

25 MS. DUNCAN: Your Honor, if I could have a

1 moment?

2 THE COURT: You may.

3 BY MS. DUNCAN:

4 Q. I just have a few more questions, Mr.
5 Urtiaga.

6 When Eric Duran threatened to kill you, I
7 think you said that Roy Martinez was in the pod with
8 him; is that right?

9 A. Yes.

10 Q. Do you recall who else was in that pod
11 with him at the time?

12 A. Eric Duran, Roy Martinez. Robert Martinez
13 I think was in there, also. I can't recall the
14 SNMers that were in that pod.

15 Q. Do you recall if David Calbert was in the
16 pod?

17 A. Oh, yes, he was. He was on the top tier.

18 Q. Anthony Ray Baca, was he in the pod?

19 A. I don't remember.

20 Q. Did you know in February of 2015, Mr. Baca
21 was out of state?

22 A. I know he went out of state. I don't know
23 the times.

24 Q. Okay. Fair enough.

25 Mr. Urtiaga, so you're currently on

1 administrative leave from the Department of
2 Corrections; is that right?

3 A. Yes, ma'am.

4 Q. At the time, February of 2015, however,
5 you were an active member of the Department of
6 Corrections?

7 A. Can you repeat --

8 Q. I'm sorry. You were an active employee in
9 February 2015; correct?

10 A. Yes.

11 Q. That's when you documented this report of
12 the statements that Eric Duran had made against you?

13 A. Yes, ma'am.

14 MS. DUNCAN: Your Honor, I have no further
15 questions. Thank you.

16 THE COURT: Thank you, Ms. Duncan.

17 Does any other defendant have direct
18 examination of Mr. Urtiaga?

19 All right. Ms. Armijo, do you have
20 cross-examination?

21 CROSS-EXAMINATION

22 BY MS. ARMIJO:

23 Q. Good morning, Mr. Urtiaga.

24 A. Good morning, ma'am.

25 Q. I guess you indicated that you are aware

1 that Mr. Baca was moved out of state; correct?

2 A. Yes.

3 Q. Because he was leader of the SNM Gang;
4 correct?

5 A. Yes.

6 Q. And you indicated that you worked in STIU
7 for two years; is that correct?

8 A. Approximately, yeah.

9 Q. Okay. And I believe that you previously
10 testified at a hearing it was because it was too
11 dangerous, it wasn't worth the pay increase?

12 A. Yes.

13 Q. Okay. And that was approximately when,
14 that you were in STIU?

15 A. I'm trying to think. I can't give you the
16 dates. I don't remember.

17 Q. All right. Well, how long have you been
18 with Corrections?

19 A. Twelve years approximately, now.

20 Q. And how long has it been since you've been
21 there?

22 A. In STIU?

23 Q. Yes.

24 A. I think 2009, I believe. I can't recall.

25 Q. Okay. You previously testified that it

1 was approximately 2010. Would that be correct?

2 A. Yeah, yeah, it was around that time,
3 ma'am.

4 Q. Okay. And so being in STIU -- and did you
5 work as an STIU officer at that PNM?

6 A. Yes, ma'am.

7 Q. So you were intimately familiar, then,
8 with the SNM, correct?

9 A. Yes.

10 Q. And I believe you had indicated that you
11 were afraid of threats, especially from SNM Gang
12 members, because they are dangerous?

13 A. Yes.

14 Q. And the persons that -- specifically that
15 you recall that were -- you were taking their
16 property from them -- let's talk -- there's three
17 people you mentioned: Robert Martinez; correct?

18 A. Yes, ma'am.

19 Q. What is his nickname?

20 A. Baby Rob.

21 Q. Roy Martinez, was that one of the
22 individuals?

23 A. Yes, ma'am?

24 Q. And what is his nickname?

25 A. I can't recall his right now.

1 Q. Shadow?

2 A. Shadow, there you go.

3 Q. And what about Eric Duran, what was his
4 nickname?

5 A. Eric Duran's, I don't remember his, ma'am.

6 Q. Okay.

7 A. We called him a bunch of different things.

8 Q. Okay. Well, I'm sure you probably did.

9 But going specifically to Baby Rob and Shadow, now,
10 those two, at the time -- and we're going back to
11 2015, specifically February 2015, those two were
12 leaders of SNM; correct?

13 A. Yes, ma'am, at the time.

14 Q. And Eric Duran was not a leader in the
15 SNM; correct?

16 A. No.

17 Q. And so if he was housed with other members
18 of SNM and he'd wanted to cooperate with law
19 enforcement, you would agree that he had to act
20 consistent with being an active SNM member; correct?

21 A. Yes.

22 Q. Okay. So he wouldn't want to act any
23 differently, especially since he was in the presence
24 of two of the big leaders that were in state at the
25 time; correct?

1 A. Yes.

2 Q. Now, you indicated that in 2015, they
3 hated him. And the "they" -- were you referring to
4 SNM hated Gregg Marcantel?

5 A. Yes.

6 Q. All right. And now, you were -- and you
7 were unaware that Eric Duran had reached out to STIU
8 to cooperate before the incident that you're
9 testifying about; correct?

10 A. Yes, I wasn't aware, ma'am.

11 Q. All right. And do you recall meeting with
12 the prosecution team, Mr. Castellano, Mr. Beck, and
13 myself back in October of this year up in Santa Fe?

14 A. At the State Pen?

15 Q. Yes.

16 A. Yes.

17 Q. And do you recall telling us that the
18 defense investigators were stalking you at your
19 house?

20 MS. DUNCAN: Objection, Your Honor. May
21 we approach?

22 THE COURT: You may.

23 (The following proceedings were held at
24 the bench.)

25 MS. DUNCAN: This is irrelevant, first of

1 all. I can absolutely clear it up on redirect. I'm
2 not sure why we're getting into it.

3 THE COURT: I don't think we ought to
4 get -- these aren't prior inconsistent statements
5 because he hasn't said them. So I don't think there
6 is any need to bring in the statements. If you want
7 to ask him if the investigators were talking to him,
8 you can get into those. But I don't think you need
9 to get into prior inconsistent statements, because
10 he's not --

11 MS. ARMIJO: I was just going to ask
12 him --

13 THE COURT: Don't ask him about prior
14 statements, just asked if he's been stalked.
15 Because he's not been impeached and asked those
16 questions, out-of-court statements. I don't know
17 what they're being offered for. Let's just ask him
18 and you can deal with it on redirect.

19 MS. DUNCAN: My objection is to the
20 stalking part, because it's irrelevant. But I can
21 clear it up on redirect.

22 THE COURT: All right.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: All right. Ms. Armijo?

1 BY MS. ARMIJO:

2 Q. Were you approached by defense
3 investigators at your house?

4 A. By a private investigator, that's what she
5 said.

6 Q. Okay. And were you uncomfortable with the
7 manner in which that person was waiting around your
8 house?

9 A. Yeah, I was scared, ma'am. I was -- I was
10 scared.

11 Q. All right. And you are currently still on
12 administrative leave; correct?

13 A. Yes, ma'am.

14 Q. For an incident that occurred in November;
15 correct?

16 A. Yes, ma'am.

17 Q. All right. And that allegation involves
18 excessive force; correct?

19 A. Yes, ma'am.

20 MS. ARMIJO: All right. Nothing further.

21 THE COURT: Thank you, Ms. Armijo.

22 Ms. Duncan, do you have redirect of Mr.
23 Urtiaga?

24

25

1 REDIRECT EXAMINATION

2 BY MS. DUNCAN:

3 Q. Mr. Urtiaga, you testified about your
4 first meeting with the defense investigator. Do you
5 remember that? Just -- Ms. Armijo just asked you
6 about meeting with a female investigator from the
7 defense?

8 A. Yes.

9 Q. And that you were uncomfortable during
10 that first meeting?

11 A. Yeah, I was.

12 Q. And since then you have met with myself
13 and other investigators for the defense; correct?

14 A. Yes, ma'am.

15 Q. And were you uncomfortable during any of
16 those meetings?

17 A. No.

18 Q. And do you have a concern that you will be
19 retaliated against for testifying on behalf of the
20 defense in this case?

21 A. I already am. They are retaliating
22 against me -- the department -- right now.

23 Q. And when you say "they" and "the
24 department," you mean the Department of Corrections?

25 A. Yes, ma'am.

1 Q. You were asked about the members of -- the
2 people of the SNM who had the antagonistic
3 relationship with Mr. Marcantel in 2015. Do you
4 remember that?

5 A. Yes, ma'am.

6 Q. I just want to show you what has been
7 admitted into evidence as Defendant's Exhibit V4.

8 Officer Urtiaga, have you ever seen a
9 report like this?

10 A. That's his location history.

11 Q. And does this show where Mr. Baca has been
12 housed over a period of time?

13 A. Yes, ma'am.

14 Q. And if you could look about halfway down
15 the page. Do you see the entry, March 12, 2014?

16 A. Yes, ma'am.

17 Q. Does that show that from March 12, 2014,
18 to October 22, 2015, that Mr. Baca was in the
19 Colorado Department of Corrections?

20 A. Yes, ma'am.

21 Q. So he was not in Level 6 during that
22 period of time; correct?

23 A. Yes, ma'am.

24 Q. And with respect to the statements that
25 Mr. Duran made to you in 2015, did Mr. Duran tell

1 you he got that information from his girlfriend?

2 A. Yes, he said his --

3 MS. ARMIJO: Objection, hearsay.

4 THE COURT: Well, what are you trying
5 prove with this statement?

6 MS. DUNCAN: Your Honor, that Mr. Duran
7 represented to this witness that he got the
8 information from his girlfriend, who worked for an
9 attorney named Ron Bell.

10 THE COURT: I think that is for the truth
11 of the matter. Sustained.

12 BY MS. DUNCAN:

13 Q. Did you ever retain lawyer Ron Bell to
14 represent you in an automobile accident?

15 A. Yes, ma'am.

16 Q. And during the course of that
17 representation, did you provide Attorney Bell and
18 his staff personal information about yourself?

19 A. Yes, ma'am.

20 Q. And did that include information like your
21 home address?

22 A. Yes, ma'am.

23 Q. And your vehicle information?

24 A. Yes, ma'am.

25 Q. Finally, you mentioned you were unsure if

1 Mr. Duran was sanctioned for the threats he made
2 against you. Do inmates sometimes negotiate with
3 the administration or STIU to avoid sanctions when
4 they've incurred a disciplinary infraction?

5 MS. ARMIJO: Objection, beyond the scope
6 of cross.

7 THE COURT: Overruled.

8 A. Yes.

9 BY MS. DUNCAN:

10 Q. And so they'll provide -- try to provide
11 information in order not to get into trouble for
12 those infractions?

13 A. Yes.

14 Q. And does the administration of STIU
15 sometimes dismiss infractions based on the inmates
16 willingness to provide information?

17 MS. ARMIJO: Objection, leading.

18 THE COURT: Overruled.

19 A. Yes, they do.

20 BY MS. DUNCAN:

21 Q. Or do they sometimes also find -- they
22 discipline the inmate, but then reduce the penalty?

23 A. Yes.

24 MS. DUNCAN: Thank you very much, Mr.

25 Urtiaga. I have no further questions.

1 THE COURT: Thank you, Ms. Duncan.
2 Do you have anything further, Ms. Armijo?

3 MS. ARMIJO: Yes, Your Honor.

4 THE COURT: Let me see if anybody else --
5 any defendant has redirect.

6 Not seeing any, Ms. Armijo?

7 RECROSS-EXAMINATION

8 BY MS. ARMIJO:

9 Q. You just indicated that you felt that
10 Corrections is retaliating against you; is that
11 correct?

12 A. Um-hum.

13 Q. Yes?

14 A. Yes, ma'am, I'm sorry.

15 Q. You've been on administrative leave from
16 Corrections since an incident in November; correct?

17 A. Yes.

18 Q. And that incident involves two inmates --
19 at least two inmates?

20 MS. DUNCAN: Your Honor, I'm going to
21 object to this line. This is hearsay.

22 THE COURT: Well, don't get into hearsay.
23 But let's see if we can ask questions that avoid
24 hearsay.

25

1 BY MS. ARMIJO:

2 Q. This incident -- initially, you reported
3 the incident because you had indicated that somebody
4 had spit on you -- an inmate; correct?

5 A. Yes, ma'am.

6 Q. And then as the matter was being
7 investigated by State Police, that matter actually
8 turned into an investigation against you and another
9 officer; correct?

10 A. Yes.

11 Q. Yes?

12 A. I don't understand your question.

13 Q. Well, initially you had reported an
14 incident involving inmates, and you reported it as
15 you were a victim; correct?

16 A. Yes. On my report, yes.

17 Q. Okay. And then New Mexico State Police
18 came out and investigated that incident; correct?

19 A. The department called State Police.

20 Q. Correct?

21 A. Yes.

22 Q. The department called State Police and
23 State Police came out. And just so that we're
24 specific, did this occur on November 10th of 2017?

25 A. Yes, ma'am.

1 Q. And then once New Mexico Police started
2 investigating it, would you agree that the
3 investigation then turned actually into an
4 investigation on you and another correctional
5 officer for excessive force?

6 A. I don't understand that question. That
7 question you're asking, did it turn into --

8 Q. Yes. Did the investigation that you
9 initially said you were a victim --

10 A. It wasn't just me, ma'am. This whole --
11 this was a big incident with a bunch of staff.

12 Q. Okay. Listen to my question. I'm being
13 very specific. And if you don't understand it, then
14 let me know.

15 A. Okay.

16 Q. Okay. I think we've already established
17 that you indicated and wrote probably a memo, is
18 that correct, indicating that you were a victim of
19 someone spitting on you -- an inmate; correct?

20 A. Yes.

21 Q. Okay. And then, as a result of that, New
22 Mexico State Police was called in to investigate it;
23 correct?

24 A. It wasn't a result of that.

25 Q. Okay. New Mexico Police was allowed --

1 came in to investigate the matter?

2 A. Yes.

3 Q. Correct?

4 A. Yes.

5 Q. And then -- I'm going to fast-forward now
6 to February. New Mexico State Police has been
7 investigating both you and potentially another
8 correctional officer for excessive use of force;
9 correct?

10 A. I guess. I don't know if they're still
11 investigating us. I don't know how that works.

12 Q. Oh, really? Because back when you
13 testified --

14 A. You're the one that told me they were
15 investigating me, ma'am.

16 Q. Okay. Well, when did you testify
17 previously before the Judge?

18 A. Here?

19 Q. Yes.

20 A. Well, what was it, in January?

21 Q. Okay. And then at that time you were --
22 you've been on administrative leave this whole time;
23 correct?

24 A. Yes.

25 Q. And then, when you were questioned last

1 time, I believe I asked you questions specifically
2 that the case has been submitted to the Santa Fe
3 District Attorney's Office; correct?

4 A. You didn't tell me that.

5 MS. DUNCAN: Objection, Your Honor,
6 misstating his testimony.

7 THE COURT: I'll let you work with him on
8 redirect. Overruled.

9 BY MS. ARMIJO:

10 Q. Well, let's see, you indicated that you
11 had been placed on administrative leave pending
12 possible misconduct -- pending possible misconduct;
13 correct?

14 A. Yes.

15 Q. And you've been on that since that time;
16 correct?

17 A. Since November, yes.

18 Q. And I asked you the question: "But you
19 were aware that there is allegations against you,
20 that New Mexico State Police is investigating you;
21 correct?"

22 And you said, "Yes," correct?

23 A. Yes.

24 Q. Okay. And then it was brought to your
25 attention that there were allegations of excessive

1 force; correct?

2 A. Yes.

3 Q. And you knew that before you testified;
4 correct?

5 A. Yes, from the department.

6 Q. Okay. And are you saying that you still
7 don't know what's going on with that case, even
8 after you testified?

9 A. I don't know what's going on right now,
10 yes.

11 Q. Okay.

12 A. The State Police, they don't come to you
13 and tell you, "You're cleared, we cleared you." If
14 they're investigating something, they can keep you
15 in limbo for up to like two years.

16 Q. Okay. But if you were cleared, the
17 Corrections Department would have brought you back;
18 correct?

19 MS. DUNCAN: Your Honor, I'm going to
20 object. This calls for speculation.

21 THE COURT: Well, if he knows the answer,
22 he can answer. If he doesn't, he can say so.

23 A. No. The department has retaliated against
24 me, ma'am. Hold on, hold on.

25

1 BY MS. ARMIJO:

2 Q. No, sir. I'm the one asking the
3 questions.

4 A. Okay, ma'am. I'm trying to answer your
5 question.

6 Q. Okay. You've been placed on leave since
7 November 10, 2017; correct?

8 A. Yes.

9 Q. Okay. Now, why don't you tell us how the
10 department is retaliating against you.

11 A. Because there has been other incidents, a
12 bunch, that there is actual use of force on camera.
13 The department has covered it up. They haven't put
14 any of the staff -- just a week ago, an officer went
15 in an inmate cell and beat him up, on camera,
16 unjustified. They did not put the officer on
17 administrative leave. The department -- they're
18 retaliating against me for testifying.

19 I was scared to do this whole thing
20 because I knew this was going to happen to me.

21 Q. Okay. Who in the department do you think
22 is retaliating?

23 A. Anthony Romero. He doesn't like me.

24 Q. So if we call Anthony Romero to testify
25 and ask him that, do you think that he's going to

1 say --

2 A. Of course, he's going to lie, ma'am.

3 Q. Okay.

4 THE COURT: Well, let's just say -- we
5 don't need to have people speculating about lying.
6 So I'm going to strike that answer. And if you say
7 that you would disagree with his statement, I think
8 you can say that. But let's leave it for the jury,
9 the determination.

10 MS. ARMIJO: No further questions, Your
11 Honor.

12 THE COURT: Thank you, Ms. Armijo.

13 Ms. Duncan?

14 FURTHER REDIRECT EXAMINATION

15 BY MS. DUNCAN:

16 Q. Just a few questions, Mr. Urtiaga. You
17 were contacted by the defense investigator in
18 October of 2017; correct?

19 A. Yes.

20 Q. And at that point you alerted both the
21 prosecution and the Department of Corrections that
22 the defense was seeking to interview you?

23 A. Yes.

24 Q. So you were placed on administrative leave
25 in October -- I mean November of 2017; correct?

1 A. Yes.

2 Q. And so that was after the Department of
3 Corrections learned that you might be called as a
4 defense witness in this case?

5 A. Yes, ma'am.

6 Q. And you testified that you've been on
7 administrative leave since November of 2017. But
8 you've been on paid administrative leave; correct?

9 A. Yes, ma'am.

10 Q. And you're still being paid by the
11 Department of Corrections?

12 A. Yes, ma'am.

13 MS. DUNCAN: Thank you. I have no further
14 questions, Your Honor.

15 THE COURT: Thank you, Ms. Duncan.

16 Any other defendants have any redirect of
17 Mr. Urtiaga?

18 All right. Mr. Urtiaga, you may step
19 down. Is there any reason that Mr. Urtiaga cannot
20 be excused from the proceedings?

21 MS. ARMIJO: We'd like to keep him on
22 standby.

23 THE COURT: You'll be subject to re-call,
24 but you'll have to remain outside of the courtroom.
25 You are free to leave the building.

1 Thank you, Mr. Urtiaga. Thank you for
2 your testimony.

3 Mr. Lowry, do the defendants have their
4 next witness or evidence?

5 MR. LOWRY: Yes, Your Honor. Just one
6 point of clarification. Can Mr. Urtiaga return to
7 Santa Fe?

8 THE COURT: You don't have any objection
9 to that?

10 MS. ARMIJO: No, Your Honor.

11 THE COURT: All right. You can return to
12 Santa Fe at this time.

13 MR. LOWRY: Your Honor, the defense would
14 call Bryan Acee to the stand.

15 THE COURT: All right. Mr. Acee, if
16 you'll return to the stand, I'll remind you that
17 you're still under oath.

18 Mr. Lowry.

19 MR. LOWRY: May it please the Court.

20 BRYAN ACEE,
21 after having been previously duly sworn under
22 oath, was questioned, and continued testifying
23 as follows:
24
25

1 DIRECT EXAMINATION

2 BY MR. LOWRY:

3 Q. Good morning, Agent Acee.

4 A. Good morning.

5 Q. Agent Acee, I just want to follow up on
6 that last testimony we heard, real quickly. You've
7 participated in undercover operations, haven't you?

8 A. Yes, sir.

9 Q. And you know what it's like to have
10 family?

11 A. I do.

12 Q. And you know what it's like to cherish
13 your children?

14 A. Yes, sir.

15 Q. If you were involved in an undercover
16 operation, and say you were working with a fellow
17 agent that had children --

18 A. Yes, sir.

19 Q. Would you tell the targets of your
20 investigation -- let's say -- let me back up for a
21 second. You've investigated other drug
22 organizations?

23 A. Yes, sir.

24 Q. You're an expert in the Juarez Cartel,
25 correct?

1 A. Yes.

2 Q. So if you were employed, and you were
3 interfacing with the Juarez Cartel, would you share
4 the personal home address, license plate number of a
5 fellow FBI agent with the cartel?

6 A. No, sir.

7 Q. You wouldn't think that that would be in
8 the line of duty as your role as an undercover
9 agent, would you?

10 A. No. I think that would be a terrible
11 thing to do.

12 Q. Now, I want to talk to you about your
13 relationship with Eric Duran. Can you pull up AE1.
14 And you know this to be Eric Duran, correct?

15 A. Yes.

16 Q. You didn't sign Mr. Duran up as a
17 confidential human source of information, did you?

18 A. No, sir.

19 Q. But you inherited him as a source of
20 information?

21 A. That's right.

22 Q. And that transfer probably happened in
23 August 5, 2015?

24 A. Yes.

25 Q. And at the time of that transfer, you

1 wrote a report detailing the transfer and your
2 impressions of Mr. Duran?

3 A. I'd call it just my first debrief.

4 Q. Okay. But your report indicated that
5 Mr. Duran was -- well, your report indicated that my
6 client, Anthony Ray Baca, was eager to kill the
7 Secretary of Corrections, Gregg Marcantel?

8 A. Yes, sir.

9 Q. And that's what you believed at that time,
10 correct?

11 A. Well, that's what Mr. Duran told me, so
12 that's what I wrote down.

13 Q. Now, in follow-up on that investigation,
14 you had Duran record Mr. Baca at Level 6 in Santa
15 Fe, correct?

16 A. Yes, sir.

17 Q. And as part of that, as signing him up,
18 you give him certain admonishments, correct?

19 A. Yes, sir.

20 Q. But you really didn't give him much in the
21 way of instruction on how to use the recording
22 device?

23 MR. CASTELLANO: Objection to leading
24 questions on direct, Your Honor.

25 THE COURT: Overruled.

1 A. I didn't give him a tremendous amount of
2 instruction, no.

3 BY MR. LOWRY:

4 Q. But the one instruction you did give him
5 is that -- and we're talking about the recorded
6 conversations, and I'll quote you from a pretrial
7 hearing: "If it's not recorded, the conversation,
8 in my mind, didn't happen."

9 A. I often say that, yes.

10 Q. But that was an instruction you gave to
11 Mr. Duran?

12 A. I believe so.

13 Q. Because you wanted him to tape Mr. Baca
14 and others about what you perceived to be their
15 criminal activities?

16 A. Yes, sir.

17 Q. And you also testified -- you've testified
18 a number of times in this case, have you not?

19 A. I have.

20 Q. Probably too many to count at this point?

21 A. A lot of hours, yes.

22 Q. And on a different occasion under oath,
23 you testified that you instructed Mr. Duran, quote:
24 "If the informant tells me a conversation happened
25 and it's not there, then they're going to have to do

1 it over. They don't get credit for it, or we don't
2 use it in terms of asking for prosecution."

3 Is that right?

4 A. Yes, that's generally what happens.

5 Q. And that's what -- I mean, you told this
6 Court that under oath?

7 A. Yes, sir.

8 Q. Now, you were responsible for
9 strategically placing my client, Mr. Baca, next to
10 Mr. Duran in October of 2015?

11 A. Ultimately, Corrections did it, but at my
12 request, yes.

13 Q. Right. And actually, the whole setup when
14 Mr. Baca returned to New Mexico from Colorado was a
15 strategic placement on your part?

16 A. Yes, sir.

17 Q. And you had Mr. Baca in the cell next to
18 Eric Duran?

19 A. Yes.

20 Q. And you had Roy Martinez very close by?

21 A. I don't remember that. I didn't make that
22 request. I do believe he was in the same area.

23 Q. Right. But the purpose was so Mr. Duran
24 could record Mr. Baca?

25 A. That was my primary objective, yes.

1 Q. And he did record Mr. Baca?

2 A. Yes, sir.

3 Q. But the initial recordings in October of
4 2015 didn't reveal any desire on Mr. Baca's part to
5 murder the Secretary of Corrections, did they?

6 A. I don't believe they did.

7 Q. And, in fact, it took well into November
8 for Mr. -- well, are you aware of any recording
9 where Mr. Baca says affirmatively, "I want to kill
10 the Secretary of Corrections"?

11 A. Not in those exact words.

12 Q. And, in fact, all of the summaries of the
13 conversations that the FBI developed for you to
14 review, they really don't indicate that kind of
15 affirmative declaration on behalf of Mr. Baca?

16 A. I think they demonstrate that he does want
17 to kill Mr. Marcantel. Not in the exact phrase you
18 used, though.

19 Q. But that was much later on into November?

20 A. Into November, yes.

21 Q. And during the pretrial hearings, again,
22 you've testified a number of times; correct?

23 A. Yes, sir.

24 Q. Each time, you took the oath of a witness
25 to tell the truth?

1 A. Yes, sir.

2 Q. And in prior testimony you've agreed that
3 Mr. Duran was a skilled manipulator?

4 A. I think he is.

5 Q. And you've said that he has, I think in
6 your words, "the gift of gab"?

7 A. Did I say that?

8 Q. Yes, you did.

9 A. Okay.

10 Q. Would you like to see the transcript?

11 A. No. I believe you. He's a talker, I
12 agree.

13 Q. You also testified at pretrial hearings
14 that any indication that this conspiracy to murder
15 the Secretary of Corrections wasn't captured until
16 after Mr. Duran disclosed to Mr. Baca that he had a
17 cellular telephone?

18 A. I guess the answer is "Yes." I mean, he
19 had the recording device and the phone at the same
20 time.

21 Q. But do you recall that testimony where you
22 said that anything that was captured was captured
23 after the cellphone?

24 A. How else would we capture it? Yeah, I
25 guess that's true.

1 Q. Well, you had an electronic ELSUR device,
2 right?

3 A. Yes. They were introduced at the same
4 time.

5 Q. Right. But in theory you could -- well,
6 let me back up for a second. Mr. Duran didn't
7 reveal that he had a cellphone to Mr. Baca until
8 much later, correct?

9 A. I don't know that that's true.

10 Q. Do you recall exchanging text messages
11 with Mr. Duran, where Mr. Duran asked you if he
12 could let Mr. Baca know that he had a cellphone?

13 A. I don't recall texting about that, no.

14 MR. LOWRY: May I approach, Your Honor?

15 THE COURT: You may.

16 A. Thank you.

17 BY MR. LOWRY:

18 Q. Does that refresh your recollection?

19 A. Yes.

20 MR. LOWRY: May I approach?

21 THE COURT: You may.

22 BY MR. LOWRY:

23 Q. Now, the intercepts. You were responsible
24 for getting the intercepts on the phone to capture
25 the text messages?

1 A. Yes, sir.

2 Q. And the intercepts captured the date and
3 the time and the content of the text messages back
4 and forth?

5 A. Yes.

6 Q. And it's fair to say that on November 3,
7 2015, Mr. Duran asked you if he could tell Mr. Baca
8 that he had a cellphone?

9 A. Yes.

10 Q. And that you responded affirmatively and
11 you said, "Let's do it. We'll be all over the
12 streets"?

13 A. Yes, sir.

14 Q. And that response from you was on November
15 4, 2015, at approximately 8:15 a.m.?

16 A. Yes.

17 Q. So up until November 4th, Mr. Baca wasn't
18 aware that Mr. Duran had a cellphone?

19 A. That's correct.

20 Q. And so between October 22nd, when Mr. Baca
21 arrived at the North facility, and November 4, 2015,
22 any recording that Mr. Duran obtained was obtained
23 using solely the ELSUR device?

24 A. I think he arrived October 24th. But
25 you're correct.

1 Q. Well, we could go back and look, but --

2 A. I don't need to argue that point. I'll
3 take your representation, sir. I thought he arrived
4 the 24th.

5 Q. Would it refresh your recollection if you
6 looked at the HAWK data report?

7 A. Well, does that tell us that he recorded
8 Baca earlier than the 24th?

9 Q. Yes, sir.

10 A. Yes, sir.

11 MR. LOWRY: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. LOWRY:

14 Q. Now, Mr. Acee, it's fair to say that this
15 is an electronic report that captured all the
16 information when Mr. Duran used a covert electronic
17 recording device with Mr. Baca?

18 A. Yes.

19 Q. And the first recording indicated on here
20 is October 22, 2015?

21 A. Yes.

22 Q. And it's approximately -- it's 19:29
23 hours, so that's what? 7:30 p.m.?

24 A. Yes, sir.

25 Q. So that would indicate when Mr. Baca

1 arrived sometime on the 22nd?

2 A. It indicates that Duran started recording
3 on the 22nd.

4 Q. All right. But Mr. Baca had to be in the
5 building for him to record him with the covert
6 electronic device?

7 A. That makes sense.

8 Q. And so there were at least 13 days
9 transpired between the 22nd, when he arrived, and
10 November 2nd, when this cellphone activity is
11 engaged?

12 A. Yes.

13 Q. And I believe you agreed with me earlier
14 on that during that period of time there was no
15 indication whatsoever that Mr. Baca wanted to kill
16 the Secretary of Corrections?

17 A. There is no recorded information.

18 Q. Right. And according to your instructions
19 to Mr. Duran, if it wasn't recorded, it didn't
20 happen?

21 A. Correct.

22 Q. Now, when I asked you at the pretrial
23 hearings, you indicated in sworn testimony that it
24 took six to eight weeks for Mr. Baca to open up with
25 Mr. Duran about his plans?

1 A. Again, I'll take your representation, but
2 I don't remember saying that.

3 Q. Would you like to see the transcript?

4 A. Sure.

5 MR. LOWRY: May I approach, Your Honor?

6 THE COURT: You may.

7 A. Okay. Thank you.

8 BY MR. LOWRY:

9 Q. Does that refresh your recollection, Agent
10 Acee, that that was your testimony, that Duran eased
11 his way into the conversation over a six- to eight-
12 week period?

13 A. Yes, sir.

14 Q. Pardon me?

15 A. Yes, sir.

16 Q. And when you were at the hearing
17 testifying under oath, you were doing your best to
18 give us the truth?

19 A. I always do, sir.

20 Q. Okay. And that's part of your duties as a
21 sworn FBI agent?

22 A. Yes, sir.

23 Q. The reason I ask, Agent Acee, is because
24 I'm a little flummoxed, because your Grand Jury
25 testimony in this case indicated that Mr. Baca, upon

1 his return to New Mexico, within 48 hours expressed
2 the desire to kill the Secretary of Corrections. Do
3 you recall that testimony?

4 A. You'd have to refresh my memory.

5 Q. Sure. Do you recall testifying in front
6 of the Grand Jury on December 1, 2015?

7 A. Yes, sir.

8 MR. LOWRY: May I approach, Your Honor?

9 THE COURT: You may.

10 A. Do you want me to turn the page, or is
11 it --

12 BY MR. LOWRY:

13 Q. No, I just want you to refresh your
14 recollection. Please read it.

15 A. Just what you've highlighted, sir?

16 Q. Yes.

17 A. Okay.

18 Q. So if that testimony is correct, you said
19 immediately upon his return --

20 A. I was asked the question, "Upon his
21 return, did he immediately start putting out hits?"
22 And my answer was, "Yes."

23 And I stand by that as I sit here today.
24 I didn't see any reference to 48 hours or anything
25 like that.

1 Q. Bear with me. I'll get to that one.

2 MR. LOWRY: May I approach, Your Honor?

3 THE COURT: You may.

4 A. Okay. Thank you.

5 BY MR. LOWRY:

6 Q. So you would agree with me that was your
7 testimony to the Grand Jury, that as soon as Mr.
8 Baca got back, within I think the first 48 hours he
9 renewed the order to hit Marcantel?

10 A. Yes, sir.

11 Q. And so both "immediately" and "48 hours"
12 is much sooner than the 13 or two weeks between the
13 22nd and the 4th. Would you agree with me?

14 A. I do agree with your question about the
15 timeliness of this, but I also mentioned the other
16 people that he renewed or that he talked about
17 hitting. I mentioned Santistevan and Vigil. And I
18 think he did talk about Santistevan before
19 Marcantel.

20 Q. Right. But in the exhibit I just showed
21 you, you say he renewed the order to hit Marcantel?

22 A. I think. Is that in there?

23 Q. I think.

24 A. Yes. I did say that, yes.

25 Q. But according to your directions to

1 Mr. Duran, you didn't have any recording indicating
2 that?

3 A. Not within 48 hours, no. It wasn't until
4 in November, as you pointed out earlier.

5 Q. Okay. So did you get the 48 hours -- I
6 mean, is that something Eric Duran told you?

7 A. Well, Duran would give me updates, yes,
8 but I tried to rely more on the recordings. I put
9 more emphasis on what was actually recorded.

10 Q. You did more than that. You actually
11 affirmatively told everyone that if it wasn't
12 recorded, it didn't happen?

13 A. Well, I often tell the informants that,
14 yeah. It's important that they get recordings. I
15 want to emphasize that with the informants in any
16 case.

17 Q. But when you were in front of the Grand
18 Jury, you didn't have any recording that that had
19 happened?

20 A. Regarding Marcantel, no.

21 Q. But nonetheless, that was your testimony
22 to the Grand Jury, that that had happened with
23 regard to Marcantel?

24 A. I said I thought that that had happened.

25 Q. Now, unlike a situation today where we

1 have a full Court, or even a pretrial hearing, at a
2 Grand Jury, the only people there are yourself and
3 the prosecutors and authorized staff like the court
4 reporter, correct?

5 A. Yes, sir.

6 Q. So nobody else is in the room to correct
7 testimony that could be off?

8 A. Like an adversarial?

9 Q. Correct.

10 A. No.

11 Q. You're placed under the same oath that you
12 are today, to be honest with the Grand Jury?

13 A. Yes, sir. As soon as you walk in, you're
14 placed under oath.

15 Q. Now, I want to talk about sort of your
16 comments -- well, your testimony last week when we
17 left off. You've heard all the testimony in this
18 case? Well, most of it?

19 A. I have, sir.

20 Q. And you testified that initial debriefs
21 with an informant, it's a 30,000-foot view, correct?

22 A. Yes, sir.

23 Q. And you testified that you might not get
24 all of the information relevant to what you're
25 looking for in that initial debrief?

1 A. I think I almost never do in the initial
2 one.

3 Q. But it's fair to say in your initial
4 debriefs, you know what you're looking for?

5 A. Yes.

6 Q. And you ask the individual about what
7 you're looking for?

8 A. Well, I don't always know what they know,
9 so I want to make that distinction. I'm trying to
10 gauge how much. In the context of the SNM, there is
11 30-plus years of stuff I was looking at. So I know
12 the overview of what I want to ask, but to really
13 drill down on it, it takes a little longer.

14 Q. Right. But in the context of those 30
15 years of FBI investigation, it's fair to say that
16 until this conspiracy to murder the Secretary of
17 Corrections, no FBI agent had been successful at
18 convincing the Department of Justice to mount a RICO
19 prosecution?

20 A. That's true.

21 Q. Because it was tried in 2009, and it was
22 rejected by the U.S. Attorney's Office, wasn't it?

23 A. Did they want a RICO? I think they were
24 just charging -- trying to charge for a specific
25 couple of homicides.

1 Q. But the point being, the Department of
2 Justice turned it down?

3 A. The United States Attorney's Office for
4 the District of New Mexico turned it down.

5 Q. That's part of the Department of Justice,
6 is it not?

7 A. It is.

8 Q. Now, you, from the very beginning of this
9 case, based on what Mr. Duran was telling you, were
10 focused on this Marcantel conspiracy?

11 A. It was one of many areas, yes.

12 Q. And it was a primary area, was it not?

13 A. It was a very important area.

14 Q. In fact, it was so important, Mr. Duran
15 got lump sum awards for purportedly saving the
16 secretary's life?

17 A. He did receive those from the Department
18 of Corrections.

19 Q. So, I mean, that's sort of an indication
20 of the value that law enforcement put on the case?

21 A. That the Department of Corrections put on
22 it, yes.

23 Q. And you asked about the Marcantel
24 conspiracy every time you debriefed an individual
25 that came to you that knew about the SNM?

1 A. I often did. I mean, I've debriefed
2 between 50 and 100 SNM members. You know, guys
3 getting out of the federal prison I don't typically
4 ask because I don't think they know anything. But I
5 would ask that question a lot of people that I think
6 might know about it.

7 Q. And I know you weren't at Mr. Duran's
8 February 19, 2015, initial interview with the FBI
9 agent that landed him, but have you looked at the
10 transcript of that conversation?

11 A. I have.

12 Q. And even then, the FBI asked Mr. Duran
13 about Mr. Marcantel?

14 A. Correct.

15 Q. And at that point in time, Mr. Duran said
16 he didn't know anything about a hit on the
17 secretary?

18 A. I believe that's correct.

19 Q. Even other individuals like Roy Martinez,
20 who has testified before this jury, his first
21 interview with you, he said that it was Eric Duran
22 that approached him about killing Santistevan, not
23 vice versa?

24 A. I don't recall that.

25 Q. Okay. Do you recall meeting with Roy Paul

1 Martinez on December 17, 2015?

2 A. You'd have to refresh my memory.

3 Q. Sure.

4 MR. LOWRY: May I approach, Your Honor?

5 THE COURT: You may.

6 A. These aren't my writing. But I'm happy to
7 review it. These are another agent's notes. Would
8 you like me to review?

9 BY MR. LOWRY:

10 Q. Sure. Do you recognize the writing?

11 A. I think it's Agent Sainato. Did I guess
12 correctly? The 302 should indicate who --

13 Q. It's -- Sainato wrote the 302.

14 A. These are his notes, then.

15 Q. But you were at that debrief, correct?

16 A. Yes, sir.

17 Q. And is there anything in Agent Sainato's
18 notes you would disagree with?

19 A. I assume that he took the notes as the
20 conversation was happening, and that he would have
21 accurately -- nothing jumps out at me. He would
22 have accurately written his notes.

23 MR. LOWRY: May I approach, Your Honor?

24 THE COURT: You may.

25

1 BY MR. LOWRY:

2 Q. You would agree that's Agent Sainato's
3 present sense impression of the conversation?

4 A. Yes.

5 Q. And his impression -- I mean, it says
6 "Marcantel hit." That's his -- that's the way he
7 captioned it, correct?

8 MR. CASTELLANO: Objection. This is going
9 to call for hearsay, Your Honor.

10 THE COURT: Are you trying to solicit
11 these out-of-court statements?

12 MR. LOWRY: Your Honor, actually what I
13 would like to do is show that the exculpatory
14 information in the notes never made it into the
15 formal report.

16 THE COURT: Well, I think I'd better
17 instruct the jury that these statements that you're
18 going to be referring to are not being offered for
19 the truth of the matter; simply for the purpose of
20 showing what statements got in what report.

21 So the jury will not consider these
22 statements for the truth of the matter, but simply
23 for purposes of determining what statements got into
24 what reports.

25 MR. CASTELLANO: I also object because

1 it's hearsay within hearsay. This isn't Agent
2 Acee's report. He's asking him to comment on
3 another agent's report.

4 THE COURT: Whether it's hearsay or within
5 hearsay, it's hearsay. You're not to consider it
6 for the truth of the matter. You can only consider
7 it for the purpose of whether they made it into the
8 report. Mr. Lowry.

9 MR. LOWRY: Thank you, Your Honor. May I
10 approach?

11 THE COURT: You may.

12 BY MR. LOWRY:

13 Q. Agent Acee, I gave you the 302 that goes
14 along with those field notes, and take your time to
15 review it. But my question is: Would you agree
16 with me that the comment about Mr. Martinez being
17 approached by Mr. Duran and asked to kill Dwayne
18 Santistevan does not appear in the report?

19 A. Could you ask me that question again,
20 please?

21 Q. Sure. The field notes indicate that Mr.
22 Martinez was approached by Eric Duran, and Eric
23 Duran asked him to kill Dwayne Santistevan?

24 A. I see what you're saying, sir, but I don't
25 know if I agree with that.

1 Q. Okay. Well, do you mind reading the notes
2 out loud?

3 A. Yes. Under "Marcantel hit"?

4 Q. Yes.

5 A. "Crazo approached Shadow saying Santi
6 needed hit."

7 Q. Okay. So Eric Duran is Crazo?

8 A. Yes.

9 Q. Shadow is Mr. Martinez?

10 A. Correct.

11 Q. So Mr. Duran approached Mr. Martinez and
12 said, "Santi" -- meaning Santistevan -- "needed to
13 be hit"?

14 A. It does say that.

15 Q. Now, where is that notion reflected in the
16 302?

17 A. The 302 doesn't reflect that sentence.

18 MR. LOWRY: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. LOWRY:

21 Q. Now, as the lead case agent, did you
22 review the reports of the FBI agents that you work
23 with?

24 A. The majority of the time. And at this
25 point in time, Agent Sainato is one of my agents

1 assigned that I'm training, so I probably actually
2 approved that report in the system, yes.

3 Q. But you would have approved that report,
4 and you were there for the interview?

5 A. Yes, sir.

6 Q. So you know what was said?

7 A. Yes, sir.

8 Q. But you didn't think it important to
9 include information that appeared to be, on its
10 face, exculpatory?

11 A. To be clear, all exculpatory information
12 should be included. I just hesitate because we're
13 basing this on the way Sainato wrote a single
14 sentence, and I don't know if it was said that way.

15 Q. Well, you were at the meeting?

16 A. I was at the meeting. My testimony is, I
17 don't recall -- I was going to say Shadow -- Roy
18 Martinez talking about that.

19 Q. That's essentially what Mr. Martinez
20 testified to on the stand, that he was approached by
21 Mr. Duran?

22 A. That may be the case, sir. Although I've
23 been here, I wasn't here the day Mr. Roy Martinez
24 testified.

25 Q. And I believe that was on a Friday.

1 A. Yeah, I had an inventory, a mandatory
2 thing I had to be up in Albuquerque for.

3 Q. You weren't prepping Eric Duran
4 downstairs?

5 A. No, sir. I was in Albuquerque.

6 Q. It's fair to say that the confidential
7 human sources under your supervision, you instructed
8 them what to do?

9 A. Well, in terms of the recording?

10 Q. Well, just in terms of -- I mean, not in
11 every particular aspect of their daily life, but you
12 would say: Here's what we're trying to accomplish;
13 let's make it happen?

14 A. Yeah, I'd give them the marching orders,
15 the objectives, whether it be in the prison or if we
16 were doing buys on the street.

17 Q. Right. Now, on November 29th, I mean, you
18 helped orchestrate the controlled buy of the pistol
19 from Chris Garcia?

20 A. Yes. But that wasn't a buy, but yes. The
21 undercover acquisition of it, yes.

22 Q. Fair enough. I apologize for using the
23 wrong language. But yes, the acquisition of the
24 weapon?

25 A. Yes.

1 Q. And during that time, I mean, you were
2 concerned -- and I think you've testified about this
3 in the pretrial hearings -- you were concerned
4 because Christopher Garcia really didn't know what
5 the gun was going to be used for?

6 A. Well, I don't know what he knew, but I
7 know or had an idea what makes good evidence. And
8 any time we pick up a firearm, you know, we're going
9 to try to instruct the undercover agent or the
10 informant to elicit statements about the gun.
11 That's just good evidence.

12 Q. Right. But, again, you testified in front
13 of the Grand Jury, and do you recall telling the
14 Grand Jury that, you know, Baca called on Chris
15 Garcia and told him, "Get guns, we've got a
16 mission," but he didn't tell him what it was for?
17 And while Chris Garcia is a felon and he is
18 prohibited from possessing firearms, for us to be
19 able to go to the house and pick up guns wouldn't
20 necessarily be fair to charge Garcia with
21 racketeering because he didn't know what the guns
22 were for?

23 A. Well, he knew they were for a mission, but
24 I think what I'm saying there is, he didn't know who
25 the target was of the mission.

1 Q. Right. And that's why you had to
2 affirmatively instruct Mario Montoya to tell him who
3 the target was?

4 A. Yeah. I would want that information
5 recorded, that Garcia -- I think it's good evidence.
6 Garcia is acknowledging who it is and is still
7 providing the gun.

8 Q. Right. But up until that point, it was
9 your understanding Chris had no idea what the gun
10 was for?

11 A. I'm not sure if it was; but either way, I
12 would ask that that conversation, that the informant
13 mention that.

14 Q. Well, you testified to the Grand Jury that
15 Mr. Garcia didn't know what it was for?

16 A. Well, I want to clarify that I believe
17 Mr. Garcia knew there was a mission. I don't know
18 that he knew -- I didn't have information that
19 Garcia at that time knew exactly whom was going to
20 be the target, but that there was a mission to kill
21 somebody.

22 Q. Right. But, I mean, what you told the
23 Grand Jury was, and I'm quoting your testimony, "He
24 didn't know what the guns were for"?

25 A. May I review that, sir?

1 Q. Absolutely.

2 MR. LOWRY: May I approach, Your Honor?

3 THE COURT: You may.

4 A. Thank you.

5 BY MR. LOWRY:

6 Q. And because you were concerned about that,
7 you instructed Mr. Montoya to tell him, right, what
8 the gun was for?

9 A. In no uncertain terms, yes.

10 Q. Now, I want to move away from the
11 Marcantel allegations to the Julian Romero. We're
12 going to go backwards in time.

13 A. Okay.

14 Q. Now, you recall taking Mr. Romero to the
15 Old Main to take a tour?

16 A. A tour, yes. I asked him to do a
17 recording in which he described his history in the
18 SNM and how the riot started. He turned 21 the
19 first night of the riot. And I asked him to walk me
20 around and explain that and the history of the SNM.

21 Q. And that was last March 31, 2017?

22 A. That sounds right.

23 Q. And even though you spent the better part
24 of probably half a day with him, you didn't produce
25 a 302 on that?

1 A. I don't think that's correct.

2 Q. Okay. And I could be wrong.

3 A. I think I did.

4 Q. Okay. But during that trip, you told Mr.
5 Romero that Mr. Baca didn't want him killed?

6 A. Yes, that's my understanding.

7 Q. Right. And you told Mr. Baca that Lupe
8 Urquizo wanted Julian Romero killed?

9 A. I haven't talked to Mr. Baca in a while.

10 Q. You told Mr. Romero? Pardon me.

11 A. Mr. Romero, yes.

12 Q. So on that trip, on the way home, you told
13 Mr. Romero, "Lupe Urquizo was the one that wanted
14 you dead"?

15 A. And some other guys, but that Baca just
16 wanted him beat up. You're right.

17 Q. Right. And you said, "And Mario Rodriguez
18 wanted him dead"?

19 A. I don't know if I said that, because Mario
20 left. Mario was down there, but I think he got
21 transferred before the actual assault.

22 Q. We can play the recording if you like.

23 A. I don't think you've ever lied to me, Mr.
24 Lowry. If you're representing that that's what I
25 said --

1 Q. I try not to.

2 A. -- I believe you.

3 THE COURT: Mr. Lowry, can we talk to the
4 jurors and see when they want to take their lunch
5 break?

6 MR. LOWRY: Absolutely, Your Honor.

7 THE COURT: Do y'all want to do like we
8 did on Friday and take about a 15-minute break, and
9 then go another hour and a half, and take a late
10 lunch? Is everybody in agreement with that? It
11 looks like everybody's hands are kind of going up.
12 Does that work for the counsel and the parties?

13 All right. Why don't we take a 15-minute
14 break. And the jury did come in a little bit later,
15 so we'll do that.

16 All rise.

17 (The jury left the courtroom.)

18 THE COURT: All right. We'll be in recess
19 for about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. Let's go on the
22 record. While Ms. Standridge is bringing the jury
23 in, let me continue to talk a little bit about this
24 Count 8. I know it's Count 3, I think, in our
25 current drafting.

1 But on Friday, the Court orally denied Mr.
2 Baca's motion for a judgment of acquittal under Rule
3 29 of the Federal Rules of Criminal Procedure as to
4 Count 8, or Count 3 now in our current instructions.
5 It's the conspiracy to commit assault resulting in
6 serious bodily injury.

7 What I understood Mr. Baca to be arguing
8 is that the uncontroverted evidence indicated that
9 Mr. Romero did not actually suffer a serious bodily
10 injury. And what the United States replied is that
11 the Romero conspirators intended to inflict serious
12 bodily injury to Mr. Romero, or perhaps to kill him.

13 And then the Court denied Mr. Baca's
14 motion, reasoning that the intent of the
15 conspirators and not the result of the actual
16 assault provides the relevant inquiry.

17 Now, here is my concern, is that
18 committing and conspiring to commit assault with
19 intent to inflict serious bodily injury, I'm not
20 sure it violates 28 USC Section 1959 of the VICAR
21 statute. What VICAR prescribes, instead, is
22 racketeering motivated -- and I'm going to quote the
23 language of the statute. "Assaults" -- it says
24 "assault," but put a plural on it. "Assaults" --
25 and here's the key language -- "resulting in" --

1 that's the language I think we need to focus on --
2 "resulting in serious bodily injury that also
3 violates state or federal law." So that's right out
4 of Section 1959(a).

5 Accordingly, my concern is that if the
6 Court concludes that the evidence presented in the
7 United States' case-in-chief would not permit a
8 reasonable juror to infer that Julian Romero
9 suffered serious bodily injury, then the Court needs
10 to enter a judgment of acquittal on Count 8, which
11 is Count 3 in our instructions.

12 Mr. Baca is charged with conspiring to
13 commit assault resulting in serious bodily injury in
14 violation of New Mexico law. But the details of New
15 Mexico's assault statute I don't think determine the
16 elements of that offense -- this is kind of an
17 interesting area -- establishing that Mr. Baca
18 violated VICAR by conspiring to commit assault
19 resulting in serious bodily injury in violation of
20 New Mexico law requires the United States to prove
21 that, one, Mr. Baca's conduct constitutes generic
22 conspiracy to commit assault resulting in serious
23 bodily injury; and two, that Mr. Baca's conduct also
24 violated New Mexico law.

25 So it looks like the jury is ready. I'll

1 give you some cites maybe before you go to lunch or
2 after you get back from lunch, some cases that I'd
3 like for you to look at and comment on.

4 But that's the language I'm sort of
5 hanging up on. It's out of the federal statutes.
6 So I'll give you some cites so that you can get a
7 fuller sense of what I'm thinking.

8 All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Mr. Acee, I'll
11 remind you, you're still under oath.

12 Mr. Lowry, if you wish to continue your
13 direct examination of Mr. Acee, you may do so at
14 this time.

15 MR. LOWRY: Thank you, Your Honor, I do.

16 THE COURT: Mr. Lowry.

17 BY MR. LOWRY:

18 Q. Agent Acee, we left off talking about the
19 Julian Romero assault, and I just wanted to -- we
20 were talking about your conversation with Mr. Romero
21 on your way home from visiting Old Main, and the
22 things you told Mr. Romero. You told Mr. Romero
23 that it was the younger guys that wanted to kill Mr.
24 Romero?

25 A. Yes.

1 Q. And that essentially Mr. Baca intervened
2 and said: I don't want him killed. He can't be
3 stabbed. If anything happens to him, you could beat
4 him up, but that's it?

5 That's not exactly what he said. He said,
6 and I'll quote, "He didn't want you to get hurt too
7 bad"?

8 A. That sounds more like it, yes.

9 Q. So essentially, Mr. Baca was calling off
10 the dogs, so to speak?

11 A. Calling it down.

12 Q. Because, again, this generational
13 difference between the thinking, if you will?

14 A. I don't know what Mr. Baca's thinking was,
15 but that's how it was related to me by at least one
16 of the guys involved.

17 Q. And that was your understanding?

18 A. That was my understanding based on my
19 conversation with him.

20 Q. Right. Now, I'm just more than idly
21 curious, but when Mr. Urquizo was here, he testified
22 that Mr. Baca ordered Mr. Romero to be killed?

23 A. Did he?

24 Q. Yes.

25 A. Okay. I thought it was someone else that

1 said that, Baby G, Jonathan Gomez.

2 Q. Well, bear with me for a second.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 A. Do you want me to read beyond the first
6 page?

7 BY MR. LOWRY:

8 Q. If you care to. I just want you to be
9 comfortable with the testimony.

10 A. Okay, sir.

11 Q. So did I understand his testimony to this
12 Court and this jury correctly that when Mr. Urquizo
13 testified, he said that he wanted -- that Mr. Baca
14 had ordered Julian Romero to be killed?

15 A. Yes.

16 Q. But that's not what you understood?

17 A. No. And in that, that you just had me
18 review, it looks like he's saying either he
19 misstated it or we miss-recorded it, recorded it in
20 our report.

21 Q. And that's what I was just getting ready
22 to show you, your report of one of your interviews
23 with him. This would be on March 6th. So you would
24 have gone to visit Mr. Urquizo on the 24th. He
25 says, "I need an attorney," and then that

1 precipitated this initial debrief.

2 A. That time line sounds correct.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 A. Yes, sir.

6 BY MR. LOWRY:

7 Q. And this is where in his trial testimony
8 he said -- he tried to blame you on -- my
9 understanding was, he was trying to blame you on
10 sloppy report writing, if you will?

11 A. No, that's not what I read.

12 Q. Okay. What did you read?

13 A. That either he made a mistake or we got
14 the names wrong.

15 Q. Right. And -- but he certainly said in
16 his trial testimony that Mr. Baca wanted to murder
17 Mr. Romero?

18 A. Yes.

19 Q. And that's not what he told you on March
20 6, 2017?

21 A. No, I don't believe that's what he told
22 me.

23 Q. In fact, he told you the exact opposite?
24 He told you the story, the same version of events
25 that you told Mr. Romero?

1 A. Yes.

2 Q. Was the United States going to do anything
3 to correct Mr. Urquizo's testimony that Mr. Baca
4 wanted Mr. Romero dead?

5 A. I don't know.

6 Q. Mr. Urquizo -- it's fair to say this
7 report also, he makes a comment in his report, as
8 you reported it. I want to move on from the Julian
9 Romero thing, and actually this is going to be --
10 while we're on Mr. Urquizo, I want to clean this up.

11 But Mr. Urquizo had informed you that when
12 he initially got to the Southern facility here in
13 Las Cruces, that he was communicating with Timothy
14 Martinez and -- who was it? -- Mario Rodriguez, and
15 they were communicating by holding up notes to a
16 glass window.

17 Do you recall that?

18 A. I do recall him telling me about that.

19 Q. And you relied on those statements of Mr.
20 Urquizo when you testified at the pretrial hearings,
21 didn't you?

22 A. Yes.

23 Q. And you took the same seat you're sitting
24 in today and testified under oath that when Mr.
25 Urquizo got to Southern, he was trying to

1 communicate with everyone by holding up notes to his
2 cell door?

3 A. I testified that that's what he
4 represented to me, yes.

5 MR. LOWRY: And can we get Government's
6 Exhibit 162? It's that overview.

7 Q. Are you familiar with this diagram by now?

8 A. Yes.

9 Q. And Mr. Urquizo's cell was right here? Do
10 you recall?

11 A. I don't.

12 Q. Okay. Would you accept my representation
13 that that was Mr. Urquizo's cell?

14 A. Yes.

15 Q. Okay. And this is the door, would be
16 right here between the pods, that we've talked about
17 repeatedly?

18 A. Yes.

19 Q. But what you testified at the pretrial
20 hearing is that Mr. Urquizo was holding up notes to
21 his door that Mr. Martinez and Mr. Rodriguez were
22 reading out in the hallway?

23 A. Correct.

24 Q. And that Mr. Martinez and Mr. Rodriguez
25 were out there cleaning or painting?

1 A. Something like that.

2 Q. Now, we've seen photographs of the pods.
3 I mean, do you honestly think that's possible, that
4 anybody could have read a handwritten note from that
5 distance?

6 A. It would be a pretty big note.

7 Q. And I think everybody would be reading it;
8 correct?

9 A. I'm sorry?

10 Q. Everybody would be reading it, including
11 the guards up here in the tower?

12 A. A note that big, yeah, I guess everybody
13 would be able to see it.

14 Q. Right. So at this point in time, do you
15 credit that idea?

16 MR. CASTELLANO: Objection, Your Honor.

17 THE COURT: Yeah.

18 MR. LOWRY: Fair enough. I'll withdraw
19 the question, Your Honor.

20 BY MR. LOWRY:

21 Q. When Mr. Urquizo testified, he testified
22 that didn't happen at all?

23 A. I thought he talked about communicating
24 with those guys at the -- I don't know what door we
25 want to call it, but the door, the entryway into the

1 pod.

2 Q. Right. Both doors? This door here, and
3 then this door here, correct?

4 A. We've talked about those two doors, but I
5 don't know if you want me to explain what my
6 understanding was.

7 Q. No. My question is this. Mr. Urquizo
8 dropped all the pretense that he communicated to
9 anybody by holding a note up to the window when he
10 testified to this jury at this trial?

11 A. I thought he testified about holding a
12 note up at a different door, but I'm going off
13 memory here.

14 MR. LOWRY: May I approach, Your Honor?

15 THE COURT: You may.

16 A. I think I see what might be the problem.

17 BY MR. LOWRY:

18 Q. Okay. Well, the problem was, he says
19 nobody -- at trial, he says nobody is communicating
20 with notes through a window, correct?

21 A. He does say that.

22 MR. LOWRY: May I approach?

23 THE COURT: You may.

24 BY MR. LOWRY:

25 Q. And he says that your report was wrong

1 when it said that they were communicating with notes
2 through the window?

3 A. Yes.

4 Q. I have more confidence in your report
5 writing than Mr. Urquizo. Do you think you got it
6 wrong in your report?

7 A. I think I may have. I appreciate the
8 confidence but, I mean, I do make errors, and I
9 think I see the sentence in my report where it may
10 be wrong.

11 Q. Okay. Which brings us to another issue
12 that, you know, Ms. Armijo had even raised with the
13 investigator, Mr. Filipiak. Why don't you record
14 these interviews with these witnesses so everybody
15 can understand what's being said?

16 A. Well, I like to. A lot of times the
17 defense attorneys don't allow me to.

18 Q. Well, if they're there under your Kastigar
19 letter, I mean, you can demand that you get to
20 record, correct?

21 A. Can I? They're not my Kastigar letters.

22 Q. Well, fair enough. But the United States
23 has the ability to record these conversations, does
24 it not?

25 A. We have recording devices but, I mean,

1 we're obviously at kind of the whim of the
2 defendant's attorney.

3 Q. Were you aware that the defendants in this
4 case wrote a letter to the Department of Justice,
5 including the prosecutors in this case, asking that
6 all of the pretrial interviews be recorded?

7 A. I'm not sure.

8 MR. LOWRY: May I approach, Your Honor?

9 THE COURT: You may.

10 A. I wasn't aware of this. I only hesitate
11 because it could have come up at a pretrial hearing
12 that I was at, but I'm not part of this.

13 BY MR. LOWRY:

14 Q. But that letter actually requested the
15 prosecutors in this case to alert you of the
16 request, so I'm assuming from your testimony that
17 did not happen?

18 A. So what is this letter, sir?

19 Q. It was a letter -- it was a formal request
20 from the defense counsel in this case, asking that
21 your pretrial interviews with witnesses in this case
22 be audio-recorded so we don't have to have these
23 debates about whether you could write a report
24 correctly.

25 A. Okay. I don't know that I was part of any

1 of those conversations.

2 Q. Okay. And my question to you is: Even
3 though that letter asked for you to be notified
4 about this request, what I'm understanding you to
5 testify to is, you never heard about it?

6 A. I'm not sure I did, but I can represent
7 that I was not directed to do so.

8 Q. Okay. And when the United States is
9 making charitable plea offers --

10 A. Charitable plea offers?

11 Q. -- charitable plea offers -- they get to
12 set the terms, don't they?

13 A. I think there is some wrangling between
14 the defense attorneys and the United States. I'm
15 oftentimes not part of those meetings.

16 Q. But recording the interviews wouldn't be a
17 big heartburn for anybody?

18 A. I don't typically record informant
19 interviews. We're, in fact, kind of discouraged
20 from doing that. A subject interview is different.

21 Q. Right. And, in fact, you emphatically
22 told Mr. Duran you don't like being recorded?

23 A. As the agent in a wiretap, no, I don't.

24 Q. Right. And so it's your preference not to
25 have an audio recording of you working with your

1 agents?

2 A. In the operational context, no. I have no
3 problem interviewing subject interviews, and usually
4 do.

5 Q. But suffice it to say, you had the
6 capability of recording these interviews?

7 A. I have a couple recording devices in my
8 bag all the time.

9 Q. All the time?

10 A. Yes.

11 Q. Now, just moving on to the Molina count,
12 which is the oldest counts, while we're on Mr.
13 Urquizo, you were here when Mr. Urquizo testified
14 that on the day he left PNM North to go to PNM
15 South, he had a conversation with Mr. Baca through
16 the window while he was in the rec yard?

17 A. He was in the yard, and Mr. Baca was
18 inside the facility.

19 Q. Right.

20 A. Yes.

21 Q. You recall we had Mr. Urquizo mark this
22 exhibit. These are his initials, that he had this
23 conversation somewhere in this area over here?

24 A. I remember that.

25 Q. Okay. Now, if you recall correctly, he

1 said that happened on the very last day he was
2 there, before he went to the South facility at PNM?

3 A. I don't remember that part, but I'll go
4 with you on it.

5 MS. ARMIJO: Your Honor, may we approach?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 THE COURT: This is an exhibit here?

10 MR. LOWRY: It's been admitted.

11 THE COURT: What is the number on it?

12 MR. LOWRY: EQ.

13 MS. ARMIJO: Your Honor, their medical
14 expert doctor is here and is in the courtroom. And
15 my understanding is -- I would understand if they
16 had a medical expert testifying something with
17 relationship to Rudy Perez. But the defense has
18 been keeping others outside, and she hadn't been
19 noticed for today.

20 THE COURT: Isn't she an expert?

21 MS. ARMIJO: She's medical, reviewing
22 records.

23 THE COURT: She's not a factual witness?

24 MS. FOX-YOUNG: No, Your Honor, she's not.
25 We alerted the Government she's an expert. She's

1 not a treating physician at all.

2 THE COURT: Well, I can't remember. I
3 think when the rule was invoked -- I can look at
4 what I usually say, but I think I usually say
5 experts can remain in the courtroom. So if she's a
6 pure expert, I don't see any problem with her being
7 in the courtroom.

8 MS. ARMIJO: Thank you, Judge.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: For the record, this is EQ.

12 MS. JACKS: Your Honor, for the record,
13 the area that Mr. Lowry was asking about appears to
14 be marked Q in the photograph.

15 MR. LOWRY: That's correct.

16 BY MR. LOWRY:

17 Q. I'll set this up. If you recall, this is
18 housing unit 3, and this is Q, R, S, T, U, V, W, X.
19 You can faintly see the letters on the top, X, W, V,
20 U, and it goes around in alphabetical order on the
21 top of the buildings.

22 A. I just see the Q and the R.

23 Q. And that's what Mr. Urquizo handwrote on
24 there?

25 A. Okay.

1 Q. Now, Mr. Acee, you testified in pretrial
2 proceedings that you tried to corroborate people's
3 story by working with the Department of Corrections
4 to verify where they were at certain periods of
5 time?

6 A. I have done that.

7 Q. And are you familiar with what we've
8 looked at repeatedly, these prisoner location
9 histories?

10 A. Yes, sir.

11 Q. And this has been previously marked, I
12 think, as V24, and it's not been admitted. Pardon
13 me. V29.

14 MR. LOWRY: May I approach, Your Honor?

15 THE COURT: You may been.

16 BY MR. LOWRY:

17 Q. I just wanted to verify the last day, the
18 day he moved from PNM North to PNM South, would have
19 been September 13, 2012, correct? We're looking at
20 a photograph of the North facility. We're looking
21 at a photograph of PNM North.

22 And the testimony was, on his last day at
23 the North facility, when he transferred to the South
24 facility, not to be confused with Southern, but PNM
25 South Level 5 in Santa Fe, he had this conversation

1 with Mr. Baca, and that he was in the rec yard,
2 according to his testimony, and Mr. Baca was here in
3 the Q pod.

4 A. Okay.

5 Q. Would you agree with me that the last day
6 that Mr. Urquizo was here at the North facility was
7 September 13, 2012?

8 A. Yes. For that year. It looks like he's
9 at the North again in '14. But yes.

10 Q. So that was after -- he's back in the
11 North, after the Molina murder?

12 A. Yes.

13 MR. LOWRY: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. LOWRY:

16 Q. Let me show you what's been admitted into
17 evidence as Defendants' Exhibit V4.

18 Now, if we look at this and locate -- it's
19 fair to say on September 13, 2012, Mr. Baca is
20 housed at the North 3A in the S unit, correct?

21 A. Yes, North 3A, Cell S101. Yes.

22 Q. So he's in the S pod?

23 A. That's what's indicated here.

24 Q. So he's not in the Q pod?

25 A. No. He's in the Q pod prior to that. I

1 don't see the date because it's got the line through
2 it.

3 Q. No, but my question is very specific. On
4 this day that Mr. Urquizo testified that he is
5 waving to Mr. Baca, saying goodbye, and Mr. Baca is
6 housed in the Q pod, and he's having his rec time
7 out here in the cage on his last day, which was
8 September 12, September 13, 2012, that couldn't have
9 happened because Mr. Baca is housed in the S pod
10 over here?

11 A. I agree. Mr. Baca is housed in the S pod.

12 Q. Now, the whole thing that starts off this
13 paper trail is, according to the testimony this jury
14 has heard, this hand-off of paperwork between Joe
15 Martinez and David Calbert in the same facility,
16 Level 6 in Santa Fe?

17 A. Yes.

18 Q. And Mr. Calbert described this paper being
19 rolled up longways and placed in the rec cage yard;
20 correct?

21 A. Yes.

22 Q. And as -- well, Mr. Martinez did that.
23 And according to Mr. Calbert, he came by and grabbed
24 it as he was cuffed behind his back?

25 A. Wasn't Calbert in the cage at the time?

1 Q. No, Calbert -- well, pardon me.

2 A. And Cheech was walking?

3 Q. That's how -- well, the paper goes,
4 Cheech, according to the Government's theory, the
5 paper goes Cheech, Calbert, Calbert, Urquizo,
6 Urquizo to Southern; correct?

7 A. Yes, sir.

8 Q. So the paperwork gets to Calbert in the
9 rec yard?

10 A. Yes.

11 Q. And he says he's walking by the cage, he's
12 handcuffed behind his back?

13 A. I thought Cheech was handcuffed and handed
14 it to Calbert, who was in the rec cage. I may have
15 misheard that, but I thought that's what I heard.

16 Q. My larger point is: Did you try to
17 attempt to verify whether that meeting or that
18 exchange was even possible?

19 A. I believe it is.

20 Q. Do the recreation sheets, where people
21 sign out to go to the rec yard, verify that they
22 were in the rec yard at the same time?

23 A. I don't know that any sheets like that
24 exist.

25 Q. Did you ask to see if they existed?

1 A. Not in that specific circumstance, but in
2 others, and there weren't.

3 Q. So you don't know? Because when we looked
4 at the sheets for Southern, they very clearly
5 demarcated when people went to rec and when they
6 didn't.

7 A. It depends on the officer. But the ones
8 that we looked at were very good. I was surprised.

9 Q. So, in your mind, it really depends on
10 who's working the unit that day, of whether things
11 are fairly documented?

12 A. Unfortunately, yes.

13 Q. Did you do anything to try to verify with
14 the Department of Corrections that that meeting
15 could have taken place as described by David
16 Calbert?

17 A. Yes.

18 Q. What was that?

19 A. I asked officers what they thought of
20 that; basically, if that was possible.

21 Q. And they just said generally it was
22 possible?

23 A. Of course. I mean, the same guards can
24 bring drugs in, or cellphones.

25 MR. LOWRY: May I have a moment, Your

1 Honor?

2 THE COURT: You may.

3 MR. LOWRY: No further questions.

4 THE COURT: All right. Thank you, Mr.

5 Lowry.

6 Ms. Fox-Young.

7 MS. FOX-YOUNG: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. FOX-YOUNG:

10 Q. Agent Acee, you are currently an FBI
11 Special Agent?

12 A. Yes, ma'am.

13 Q. And you have worked in that capacity for
14 about nine years; is that right?

15 A. Yes, ma'am.

16 Q. And before that, you were a police
17 officer?

18 A. Yes.

19 Q. For how many years?

20 A. About 10.

21 Q. So would it be accurate to say that you've
22 been trained in law enforcement practices for almost
23 20 years?

24 A. Yes, ma'am.

25 Q. And as an officer, and as an FBI agent,

1 you've been trained to be very thorough in
2 documenting information in your investigations,
3 right?

4 A. Yes.

5 Q. Maybe even more so in your work with the
6 FBI than as a police officer?

7 A. I have become more thorough, yes.

8 Q. And you conducted a number of interviews
9 in this case; isn't that right?

10 A. I did.

11 Q. Can you quantify how many?

12 A. More than 50.

13 Q. Okay. And some of those interviews were
14 also attended by other personnel from the FBI,
15 right?

16 A. Yes.

17 Q. Including Agent Nancy Stemo?

18 A. Yes.

19 Q. And Agent Neale?

20 A. Thomas Neale.

21 Q. And Agent Roundy?

22 A. No.

23 Q. Roundy wasn't there?

24 A. No. Agent Sainato.

25 Q. Agent Sainato. And others, other

1 personnel?

2 A. STIU, mostly.

3 Q. And as the jury has heard, on many
4 occasions those interviews, prosecutors are present,
5 right?

6 A. Yes.

7 Q. Not all of them?

8 A. Sometimes not the initial one, but usually
9 after that they are.

10 Q. And for each of these interviews that you
11 conduct or attend, you take notes, right?

12 A. If I'm the primary interviewer, I do. If
13 I'm not, I don't.

14 Q. Okay. And in the instance that you were
15 discussing a little while ago, where Agent Sainato
16 was the primary interviewer, those were his notes
17 from that interview, right?

18 A. Yes, ma'am.

19 Q. So sometimes you take copious notes when
20 you're the primary interviewer?

21 A. Sometimes, yes.

22 Q. And is it from those notes that you, as
23 the primary interviewer, then develop what's called
24 a 302 report?

25 A. It's from -- the notes are helpful.

1 They're a reference, yes.

2 Q. So you use those notes as a reference.

3 You don't have a recording, as you just testified,
4 so you have to rely on the notes?

5 A. Sometimes I have a recording. Sometimes I
6 have both.

7 Q. In this case, did you record some of those
8 interviews?

9 A. Some interviews have been recorded, yes.

10 Q. Do you recall which ones?

11 A. Ma'am, I said I interviewed over 50
12 people.

13 Q. If you don't recall, it's okay.

14 A. I don't. I can think of maybe a few off
15 the top of my head, but I'd want some time to
16 prepare something a little more accurate.

17 Q. And so you take the -- as the primary
18 interviewer, you take your notes and you develop a
19 302 report, and that report then is relied on by the
20 prosecution, right?

21 A. Yes.

22 Q. It's relied on by the FBI?

23 A. It is.

24 Q. And in some instances, it's relied on by
25 this Court, by Judge Browning?

1 A. Judge Browning has looked at some of our
2 302s.

3 Q. And the information in your reports is
4 relied on by this jury through the course of this
5 trial, right, as it comes out in the testimony?

6 A. Yes.

7 Q. And so I want to ask you about a specific
8 interview, one of the ones that I think you'll
9 recall conducting, and there has been testimony
10 about it. I don't know if you testified about it.
11 Do you remember interviewing Robert Martinez in
12 December 2015?

13 A. The SNM member? Or the ex-BCSO detective?

14 Q. Baby Rob. Do you remember that?

15 A. Yes.

16 Q. And I think you were in the courtroom
17 earlier today when the prosecutor referred to him as
18 a "big leader." Do you remember that?

19 A. I think he was a leader.

20 Q. Do you remember hearing her call him the
21 "big leader"?

22 A. No.

23 Q. And would you consider him to be somebody
24 who was influential in the organization?

25 A. Yes.

1 Q. Pretty high up?

2 A. Yes.

3 Q. And when you met with him, he prepared a
4 61-page written statement for you, didn't he?

5 A. He did.

6 Q. You asked him to do that?

7 A. Yes.

8 Q. And that statement or the substance of
9 that statement ultimately became part of a report
10 that you generated, right?

11 A. Did I?

12 Q. Do you remember that?

13 A. I remember that incident. I remember
14 talking to him. Did I generate the report?

15 Q. Well, I'll show it to you, and you can see
16 what you think.

17 MS. FOX-YOUNG: Your Honor, may I
18 approach?

19 THE COURT: You may.

20 BY MS. FOX-YOUNG:

21 Q. Agent Acee, do you remember whether this
22 report dated July 12, 2016, the December of 2015
23 interview of Robert Martinez, is yours?

24 A. Yes and no. So the report is mine. I
25 think it indicates I cut and paste in there, an

1 intern transcribing it. Did I say that correctly?

2 Q. Okay. And I'm not trying to catch you in
3 some sort of technicality. I just want to know if
4 this is your report.

5 A. Yes, ma'am.

6 Q. And I know you have staff who work with
7 you to help you complete these things. Do you
8 remember that as part of that 61-page written
9 statement from Baby Rob, there was provided to you
10 and the FBI a list of 167 individuals that Baby Rob
11 said were in the SNM?

12 A. Yes.

13 Q. I don't expect you to recite all 167. I
14 know you have a good memory, but I don't expect you
15 to recite all the individuals today. But do you
16 remember that list?

17 A. Yes.

18 Q. And you remember, do you not, that Rudy
19 Perez is nowhere on that list?

20 A. I don't know.

21 Q. Do you want to take a look?

22 A. Sure.

23 MS. FOX-YOUNG: May I approach?

24 THE COURT: You may.

25

1 BY MS. FOX-YOUNG:

2 Q. If you'll just turn to the third page,
3 that's where it starts. You can take your time.

4 A. I don't see his name listed.

5 Q. And why don't you just hold on to that
6 document for a minute, Agent Acee. Do you remember
7 that Baby Rob did include Mario Rodriguez on that
8 list as a shot caller?

9 A. Yes.

10 Q. And you see that there today?

11 A. I do.

12 Q. And you remember that Baby Rob also
13 included for you and the FBI's consideration Billy
14 Cordova on that list?

15 MR. CASTELLANO: Your Honor, objection to
16 hearsay at this point because these aren't prior
17 inconsistent statements.

18 MS. FOX-YOUNG: Your Honor, Mario
19 Rodriguez being a shot caller is impeachment of
20 Mario Rodriguez's testimony.

21 THE COURT: Let me do this: What's in and
22 out of these reports, I'll allow the jury to know
23 what's in and out of those reports. But you can't
24 consider these for the truth of the matter. These
25 are only to determine why certain things were in

1 reports and what wasn't in other reports in your
2 determining the credibility of witnesses, but you
3 can't consider these statements for the truth of the
4 matter.

5 BY MS. FOX-YOUNG:

6 Q. Can you answer the question, Agent Acee?

7 A. Billy Cordova is listed.

8 Q. Okay. Thank you.

9 Just as a followup, you were in court when
10 Baby Rob testified, right?

11 A. Yes, ma'am.

12 Q. You remember he never identified Rudy
13 Perez at all? Do you recall that?

14 A. That sounds familiar.

15 Q. So let's talk about Mario Rodriguez. And
16 you remember that Baby Rob identified him
17 specifically as a shot caller to you, and you
18 documented that in your report?

19 A. Yes. I think he did in his written
20 statement we were talking about, yes.

21 Q. And that was then published in this FBI
22 302?

23 A. Yes, ma'am.

24 Q. Let's take a look at Government's Exhibit
25 586, and let's just pick up where you left off

1 talking about Mario Rodriguez last Friday. It's
2 been a few days.

3 I think you testified that in a meeting
4 with Mario Rodriguez sometime in the last several
5 months, you learned about some other shanks that he
6 told you about, and I think you said they were at
7 the North and South facilities?

8 A. Yes.

9 Q. And when you said the North and South
10 facilities, did you mean in Santa Fe at PNM? Or did
11 you mean in Santa Fe and also the Southern New
12 Mexico Correctional Facility?

13 A. Both were in Santa Fe at the PNM.

14 Q. Okay. And we're looking at a picture of
15 Mario Rodriguez up here, Government's Exhibit 586?

16 A. Yes.

17 Q. So this is the same person that told you
18 about the additional shanks?

19 A. Yes.

20 Q. Did he tell you if those were his shanks?

21 A. No, but I assumed they were.

22 Q. You assumed that they were and that he had
23 hidden them, had secreted them somewhere in the
24 North and South facilities?

25 A. Yes.

1 Q. Where were they actually recovered?

2 A. I wrote a report on it, and so did STIU.
3 Off the top of my head, I think one was in a heating
4 vent. Is that what you're asking me, where
5 specifically?

6 Q. Exactly.

7 A. They were difficult to locate. I think
8 one was in a heating vent, some kind of crevice.
9 And the other was inside a bed mattress. And that's
10 why I assumed they were his, because he knew where
11 they were.

12 Q. And what were they made of, if you know?

13 A. They were either Plexiglas or metal.

14 Q. Do you know if either or both of those
15 weapons had been used in the assault on Mr. Sosoya
16 that Mario Rodriguez described?

17 A. I don't believe that they were. Because I
18 remember asking him if there was DNA on them besides
19 his, something to that effect. And he said
20 something that he had them but they weren't used on
21 people, something along those lines.

22 Q. You don't remember exactly?

23 A. I don't remember the exact words, but I
24 remember thinking: Do I need to send these to the
25 lab? Is there a victim attributed to these?

1 And these were unused, but carried by him
2 at one time, was my impression.

3 Q. So based upon that impression, you took
4 his word for it and you didn't send them to the lab?

5 A. No, they're still -- I'm not sure if we
6 have them or if STIU has them. They may have been
7 transferred to us.

8 Q. So you don't know whether there is any
9 forensic evidence connecting those weapons to any of
10 Mario Rodriguez' past assaults or killings?

11 A. I don't believe there is, no.

12 Q. You don't know because you didn't send
13 them to the lab, right?

14 A. Well, the lab wouldn't tell me that. The
15 lab wouldn't just give me that type of an answer.

16 Q. Let me ask a different question, then.

17 A. Sure.

18 Q. You don't know if Mario Rodriguez' DNA or
19 the DNA of the victim is on those shanks, because
20 they haven't been processed, right?

21 A. Well, the second part of your question,
22 it's true they haven't been processed. I don't
23 believe they were used in any assaults on people.

24 Q. But you don't know? You believe they
25 weren't?

1 A. I believe they weren't. I don't have any
2 victims left that I would attribute it to.

3 Q. Let's talk about Mr. Esparza. Do you
4 remember Mario Rodriguez testified that he stabbed
5 Mr. Esparza, and that he bit his ear off? Do you
6 remember that testimony?

7 A. Yes.

8 Q. Do you know what weapon was used to
9 stab -- I mean, I understand that Mario Rodriguez
10 used his teeth to bite Mr. Esparza's ear off, but do
11 you know what weapon was used to stab Mr. Esparza?

12 A. Yes.

13 Q. What weapon was that?

14 A. A shank.

15 Q. Do you know where that shank is?

16 A. I believe it broke in the victim.

17 Q. Okay. So you think that shank was
18 recovered and is not here today?

19 A. Yes.

20 Q. And do you know what weapon, sitting here
21 today, was used to assault Mr. Sosoya, what weapon
22 Mr. Rodriguez used to assault Mr. Sosoya?

23 A. Yes.

24 Q. Which weapon was that?

25 A. It was a crudely made one. He didn't have

1 enough time to finish it. And it also broke.

2 Q. So that is not one of the two weapons that
3 you've recovered from Santa Fe?

4 A. Correct.

5 Q. And you were aware, and I think
6 participated in the recovery of a shank that Mario
7 Rodriguez told you he had in his shoe, right?

8 A. Yes. I watched. Yes.

9 Q. Okay.

10 A. I watched the shoe opened here in court.

11 Q. Like we all did?

12 A. Yes.

13 Q. So do you know when -- if and when Mario
14 Rodriguez used that shank on any victims?

15 A. I don't believe he did.

16 Q. Do you know? This is based on what Mario
17 Rodriguez told you.

18 A. That, and the lack of any other assaults.
19 We would need a victim to assume that he used it on
20 the person.

21 Q. Okay. So you don't have a victim with an
22 unknown assailant, so you're just presuming that
23 Mario Rodriguez didn't use that weapon?

24 A. To assault a person, yes.

25 Q. Okay. Let's take a look at Defendants'

1 Exhibit EV. Do you recognize this image, Agent
2 Acee?

3 A. Yes.

4 Q. What is that?

5 A. That's two shanks wrapped in what I
6 believe is cellophane, that Mario Rodriguez removed
7 from his rectum during an interview here at the
8 courthouse on October 24th of 2017.

9 Q. Okay. And did you actually -- I'm not
10 trying be gross, but how do you know he removed them
11 from his rectum? Did you see those shanks emerge?

12 A. No.

13 Q. He did it himself? The FBI was not
14 involved?

15 A. The Marshal Service was involved.

16 Q. Okay.

17 A. He told us they were there, and then the
18 marshals removed him and took him to an area that
19 they wanted the weapons produced.

20 Q. Okay. And let's take a look at Exhibit
21 EW. Are these the same weapons, but just unwrapped?

22 A. Yes.

23 Q. And let's also look at EX. Same weapons,
24 right?

25 A. Yes.

1 Q. And so on that day that Mr. Rodriguez
2 presented you with these weapons, you took them into
3 evidence?

4 A. Eventually. That day, the Marshal Service
5 took them into their evidence, and I later caused
6 that to be transferred to the FBI's evidence.

7 Q. Okay. And so sitting here today, do you
8 know where these weapons are? They're not in the
9 courtroom, right?

10 A. I didn't bring them, no. I believe
11 they're still in our evidence --

12 Q. Okay.

13 A. -- in Albuquerque.

14 Q. They have not been processed for any
15 forensic evidence, have they --

16 A. No.

17 Q. -- to your knowledge?

18 And you don't know whether or not these
19 weapons were used on any victim, do you?

20 A. Again, I don't believe they were.

21 Q. You don't know?

22 A. Do you want me to put a percentage on it?

23 Q. No.

24 A. I mean, I don't believe they were used on
25 any people.

1 Q. Because that's what Mario Rodriguez told
2 you?

3 A. And we don't have a victim.

4 Q. Okay. And on the same day that Mario
5 Rodriguez retrieved these weapons that he had been
6 keistering and provided them to the FBI, he also
7 told you about his desire to kill other defendants
8 in this case in the courtroom, right?

9 A. Yes.

10 Q. And, in fact, he told you that he had a
11 specific plan for how he was going to carry out
12 those executions; isn't that right?

13 A. Yes.

14 Q. And --

15 A. Just one.

16 Q. Just one? He only told you about one?

17 A. Just one execution he had planned.

18 Q. And so you met with Mario Rodriguez on
19 November 1, 2017; isn't that right?

20 A. I'm not sure. One of the debriefs of him
21 I was not present at. I did the follow-on. I think
22 Agent Stemo did the first. So I was there the 24th.
23 There was a second debrief that I wasn't at. And
24 the third one, I did.

25 Q. Okay. So I'm just talking -- we don't

1 have to get the specific date. And we'll talk about
2 the one Agent Stemo did. But the one that you did,
3 you took a lot of notes, right?

4 A. Yes, ma'am.

5 Q. You were the primary investigator? I'm
6 sorry. What was the word? Primary agent?

7 A. Or interviewer, yes.

8 Q. Interviewer on that one. And so you took
9 a lot of notes. And you actually produced a draft
10 302 that you then presented to Mario Rodriguez for
11 his commentary; isn't that right?

12 A. I wanted to make sure -- not so much
13 commentary. I wanted to make sure I got details
14 correct.

15 Q. Okay.

16 A. I had noticed in some prior 302s, where we
17 didn't get the details exactly correct.

18 Q. Okay. And so sometimes it has been your
19 practice to draft a report, and then provide it to
20 the government witness so the government witness can
21 annotate or make changes or additions to that
22 report; is that right?

23 A. No. That was actually -- I think that was
24 the first time I've done that. I'll go over it with
25 them and their attorney. But it was the first

1 time -- I think it had to do with some time
2 constraints, where I gave an actual physical copy.
3 I can't think of another circumstance where I've
4 done that.

5 Q. But in this case with Mario Rodriguez, you
6 thought it was important enough to get the details
7 right, and you had the time, right?

8 A. Yes, I definitely want to get the details
9 right.

10 Q. And you didn't have any time constraints
11 that you were just talking about, so you provided
12 Mario Rodriguez with a draft?

13 A. I'm saying that we did have the time
14 constraints, and that's why I did provide it, so it
15 left with him.

16 Q. Okay.

17 A. Then I picked it up at a later date.

18 Q. So Mario Rodriguez took your typewritten
19 draft report and made some additions to it, right?

20 A. Correct.

21 Q. And with respect to his plan to execute
22 one of the co-defendants during the course of the
23 trial, he provided you more detail, right?

24 A. I assume so, if you're looking at it.

25 Q. Would you like to see it, and would it

1 refresh your memory to look at his notes?

2 A. Yes.

3 MS. FOX-YOUNG: Your Honor, may I
4 approach?

5 THE COURT: You may.

6 BY MS. FOX-YOUNG:

7 Q. Agent Acee, you see right here?

8 A. Yes.

9 Q. And so Mario Rodriguez gave you a little
10 bit more detail. Do you remember now what he told
11 you about how he was going to kill one of his
12 co-defendants in trial?

13 A. Yes.

14 Q. What did he say?

15 A. During a lunch break, he was going to
16 retrieve -- I think what he said was, he was going
17 to stash the knife back there, behind that door,
18 during a bathroom break. And then take a break, and
19 either during a lunch break or one of the court
20 recesses, he was going to stab Mauricio Varela, one
21 of his -- one of the co-defendants in the larger SNM
22 case.

23 Q. Okay. And the knife that he was going to
24 stash, is that the one that he was carrying in his
25 rectum?

1 A. It would have been one of those two
2 knives.

3 Q. Okay. So he made this change for you, but
4 you didn't actually adopt his language and include
5 it in your final report, did you?

6 A. I'm not sure.

7 Q. So let's back up a little bit with Mario
8 Rodriguez. You explained that you did not
9 participate in the first debrief of him, that Agent
10 Stemo was there, but you were not there; isn't that
11 right?

12 A. I think that was the second one. I just
13 know that she wrote the report. I don't think I was
14 at that one. Or I may have had to leave for some
15 reason.

16 Q. Have you had occasion to review that
17 report?

18 A. I have seen it, yes.

19 Q. Okay. So you remember that it was at that
20 debrief that Mario Rodriguez told the FBI that when
21 he went into Rudy Perez' cell to take pieces off of
22 Rudy Perez' walker, Rudy Perez looked scared? Do
23 you remember that?

24 A. I do recall reading that, yes.

25 Q. Okay. And that was Agent Stemo's -- that

1 was included in Agent Stemo's report, and then
2 provided to you as the case agent, right?

3 A. Yes, ma'am.

4 Q. And you looked at that report before you
5 debriefed Mario Rodriguez on the occasion that we
6 just talked about?

7 A. I did.

8 Q. And on that occasion, when Mario Rodriguez
9 removed the shanks and told you about the other
10 shanks, you gave him an opportunity to review Agent
11 Stemo's earlier report, didn't you?

12 A. Yes.

13 Q. And you gave him an opportunity to clarify
14 anything that he wanted to clarify in that report,
15 right?

16 A. Yes.

17 Q. And he testified about that. Do you
18 remember that?

19 A. Yes.

20 Q. And he never changed his observation or
21 the fact that when he entered Rudy Perez' cell on
22 March 7, 2014, to take shanks off of Rudy's walker,
23 Rudy looked scared? He never changed that in the
24 report, right?

25 A. Agent Stemo didn't change that in the

1 report, and he didn't request that that be changed.

2 Q. Okay. And so subsequent to his review of
3 that earlier report, I think you testified you
4 completed a report, and then you sent him back to
5 his cell with that report to annotate, right?

6 A. My draft, yes.

7 Q. And you took notes on it, and you looked
8 at some of those notes.

9 MS. FOX-YOUNG: What is defense next in
10 order? Your Honor, I am marking Defendants' Exhibit
11 FV. And I would just like to approach the witness.

12 THE COURT: You may.

13 BY MS. FOX-YOUNG:

14 Q. Agent Acee, do you know what this document
15 is?

16 A. I believe so. Did you just receive this?

17 Q. Do you recognize it?

18 A. Yes.

19 Q. And I'm also going to show you the report
20 we looked at a few minutes ago with Mario Rodriguez'
21 handwritten annotations. Do you see how they're in
22 caps?

23 A. Yes.

24 Q. And you see how this document has caps on
25 it?

1 A. Yes.

2 Q. Can you tell me if that handwriting looks
3 similar to you?

4 A. It looks similar.

5 Q. Okay. Agent Acee, you said it looks
6 similar?

7 A. Yes.

8 Q. Okay. I think it just might have been we
9 moved the mic, and it was a little hard to hear.

10 A. It looks similar.

11 Q. And having looked at this document, can
12 you tell me what it is?

13 A. Yes. It's a letter written by Mario
14 Rodriguez. I asked if that was a new document,
15 because I think it was just produced to the
16 Government and the defense yesterday.

17 Q. Last night, right?

18 A. Yes.

19 Q. And you think this is a document that
20 Mario Rodriguez authored in 2014?

21 A. I do.

22 Q. All right.

23 MS. FOX-YOUNG: Your Honor, I move the
24 admission of Defendants' Exhibit FV.

25 THE COURT: Any objection, Mr. Castellano?

1 MR. CASTELLANO: No objection, Your Honor.

2 THE COURT: Any objection from any other
3 defendant? Not seeing or hearing any, Defendants'
4 Exhibit FV will be admitted into evidence.

5 (Defendants' Exhibit FV admitted.)

6 BY MS. FOX-YOUNG:

7 Q. All right. And so you will recall that
8 when Mario Rodriguez testified a number of days ago,
9 Ms. Armijo asked him how Rudy Perez seemed when he
10 came in and he took the piece from the walker. And
11 at first he said that Rudy Perez had no expression,
12 something along those lines. Do you remember that?

13 A. Vaguely.

14 Q. Ms. Armijo asked him that. And then Mr.
15 Villa got up, and he asked him about this prior
16 statement to Agent Stemo, that actually when he had
17 gone into Rudy Perez' cell, Rudy looked scared. Do
18 you recall that?

19 A. In the statement, yes.

20 Q. Yes. And you'll also recall that he was
21 asked about having the chance to correct Agent
22 Stemo's report, right?

23 A. Yes.

24 Q. And he testified, just as you just have,
25 that he had the opportunity to correct that report,

1 right?

2 A. Correct.

3 Q. And that he never changed that statement,
4 right?

5 A. Right.

6 Q. Okay. So it wasn't until he testified
7 before this jury that he tried to change that
8 statement a little bit. Do you remember that?

9 A. I know that his testimony and the
10 statement are different.

11 Q. Okay. And Mario Rodriguez made a number
12 of annotations on this draft 302. I'm sure -- it's
13 been a few months; it's been since November of last
14 year. But you have reviewed at some point all of
15 those changes, right?

16 A. Yes.

17 Q. And you took them to heart?

18 A. I wouldn't say that. I mean, I reviewed
19 them.

20 Q. Do you remember when you debriefed him
21 that you asked him, as you ask all of these
22 government witnesses, why he wanted to cooperate
23 with you, right?

24 A. Yes.

25 Q. And do you remember what you included in

1 your report as the answer to that question?

2 A. No. I have an answer off the top of my
3 head, but I don't recall exactly what I said in my
4 report.

5 Q. What's the answer off the top of your
6 head?

7 A. He was fatigued. He was tired.

8 Q. Do you remember that you wrote that he
9 cooperated because he wanted to change his life?

10 A. Yes.

11 Q. And that he was tired and out of energy?

12 A. Yes.

13 Q. And you think that's accurate?

14 A. I do.

15 Q. And you recall that when you gave Mario
16 Rodriguez the chance to change or correct or add to
17 that answer, he changed it? Do you remember that?

18 A. No.

19 MS. FOX-YOUNG: Your Honor, may I
20 approach?

21 THE COURT: You may.

22 A. Yes.

23 BY MS. FOX-YOUNG:

24 Q. Do you see that, Agent Acee?

25 A. Are you going to ask me to read it? I

1 need to look at it longer, if I could.

2 Q. You could read it.

3 A. Just what he added?

4 Q. Yeah. What did he add?

5 A. I think the first word is "and." Yes.

6 "And the SNM was so fucked up, no loyalty!"

7 exclamation point.

8 Q. So when you gave Mario Rodriguez the
9 chance to put in his report his reason for becoming
10 a government witness, he said because "the SNM was
11 fucked up, no loyalty," right?

12 A. He added that.

13 Q. Okay. But that didn't go into your final
14 report?

15 A. Did it not?

16 Q. No.

17 A. Okay.

18 Q. You also had what appears to be a lengthy
19 conversation, dialogue, with Mario Rodriguez about
20 what it was like to be in solitary confinement at
21 PNM, didn't you?

22 A. I don't know how lengthy it was, but he's
23 talked about his experiences there.

24 Q. You remember talking to him about that?

25 A. I remember him making some comments about

1 that, yeah. I don't know how interested I was in
2 it, but he did talk about it.

3 Q. And he talked about all the increased
4 violence and the paranoia that comes from being in
5 solitary?

6 A. Yes.

7 MR. CASTELLANO: Calls for hearsay.

8 THE COURT: Well, are you trying to elicit
9 out-of-court statements?

10 MS. FOX-YOUNG: It's impeachment.

11 THE COURT: Well, let me do this: Let me
12 once again instruct the jury that you cannot
13 consider these for the truth of the matter. These
14 are only to determine the credibility of the
15 witnesses that you've heard, not for the purposes of
16 considering these statements for the truth of the
17 matter.

18 MR. CASTELLANO: And I object because this
19 isn't impeaching any statement by Mario Rodriguez,
20 Your Honor.

21 THE COURT: Well, why don't y'all
22 approach.

23 (The following proceedings were held at
24 the bench.)

25 THE COURT: So what statement by Mr.

1 Rodriguez are you impeaching?

2 MS. FOX-YOUNG: Your Honor, I don't have a
3 direct quote, but his testimony about solitary was
4 along the lines of: It's not bad.

5 Mr. Villa asked him about it. And I'm not
6 going any further on this. I want to get into his
7 change, and what he added to it. But he did not
8 talk about the extreme paranoia when Mr. Villa tried
9 to elicit that from him, and the violence that comes
10 from locking these guys in solitary. So it's
11 impeachment of that testimony.

12 THE COURT: I don't have a transcript
13 where I can dispute what Ms. Fox-Young says. Is
14 your memory so different that I should not go ahead
15 and allow this?

16 MR. CASTELLANO: Yes, Your Honor. Even
17 from his statements, he said that's not that bad.
18 That isn't necessarily impeachment. That statement,
19 even if the recollection is true, his opinions, it's
20 not bad, regardless of the result. So it's clearly
21 trying to get in a hearsay statement to help Rudy
22 Perez, obviously, but it doesn't impeach the
23 statement. It's not contradictory to his prior
24 statement.

25 MS. FOX-YOUNG: I think it is

1 contradictory, and it's for the jury to decide.

2 THE COURT: I think there is enough
3 tension there. I'll go ahead and allow the
4 statement. But I'll remind again, the jury, that
5 they're not to consider this for the truth. They
6 can only use it to determine Mr. Rodriguez'
7 credibility.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Again, I'll remind
11 you that you can't consider this testimony for the
12 truth of the matter, what Mr. Rodriguez said. You
13 can only use it to determine how credible Mr.
14 Rodriguez is when he testified. So you can use it
15 only for that purpose, but not for the truth of the
16 matter.

17 Ms. Fox-Young.

18 MS. FOX-YOUNG: Thank you, Your Honor.

19 BY MS. FOX-YOUNG:

20 Q. Agent Acee, I think you were saying you
21 did recall Mario Rodriguez talking to you about how
22 paranoid people get in solitary confinement, right?

23 A. Yes.

24 Q. And the violence that ensues as a result?

25 A. Yes.

1 Q. The plotting and the scheming?

2 A. Yes.

3 Q. And do you remember that that is another
4 area of your draft report that Mario Rodriguez
5 actually added to when you gave him the opportunity?

6 A. That sounds familiar, yes.

7 Q. Okay. Do you remember what he said?

8 A. No.

9 MS. FOX-YOUNG: Your Honor, may I
10 approach?

11 THE COURT: You may.

12 A. Do you want me to read it?

13 BY MS. FOX-YOUNG:

14 Q. Sure.

15 A. Just what's highlighted? Or everything?

16 Q. What's highlighted.

17 A. It's a little difficult to read.

18 Q. How about I'll read it, and you tell me if
19 you think this is inaccurate. He says it's --

20 THE COURT: Well, I think put it in front
21 of him to refresh his memory. I think that's where
22 we are.

23 Q. You can take your time. It's a little bit
24 hard to read the writing.

25 A. I think I can get everything but one word.

1 He says, "It's so fucked up that it will never
2 amount to what it was" -- and then I'm not sure what
3 the next word is; oh, it's parentheses -- "SNM being
4 what it used to be."

5 Q. Thank you.

6 So Mario Rodriguez told you -- he added
7 this to the report. He said, "It's so fucked up
8 that it will never amount to what it was, SNM being
9 what it used to be."

10 Do you think he meant that SNM would never
11 be what it used to be again?

12 A. Yes.

13 Q. But you didn't include that in your final
14 report, did you?

15 A. I may not have.

16 Q. You didn't include any F-words in your
17 final report, did you?

18 A. Did I not? I'll sometimes put them in
19 quotations. But I don't word my reports that way,
20 no.

21 Q. And did Mario Rodriguez tell you anything
22 about -- anything more about how different things
23 had become with the SNM as compared with the old
24 days?

25 A. I'm not sure. He may have.

1 Q. You don't remember him telling you that
2 the tabla used to be really powerful and meaningful,
3 but it wasn't anymore?

4 A. Not off the top of my head, no. Forgive
5 me. I've just talked to so many of these guys.

6 Q. I understand, Agent Acee. Would you like
7 to just take a look to refresh?

8 A. Sure.

9 Q. Agent Acee, it starts right here on this
10 page and just goes to the very beginning of the next
11 page.

12 A. And the question is: Did he add anything?

13 Q. The question is: Do you recall Mario
14 Rodriguez, when you debriefed him, telling you about
15 the tabla, how it used to be powerful and
16 meaningful, and this wasn't true anymore?

17 A. Yes. Yes.

18 Q. And that's actually what you documented in
19 the report, isn't it?

20 A. Yes, ma'am.

21 Q. Okay. Thank you. And so the truth is
22 that Mario Rodriguez gave you at least three big
23 reasons in his annotations to this report for why he
24 cooperated? He added those in, didn't he?

25 A. I don't know that he gave me big reasons.

1 The second part of your question is, yes, he
2 obviously added some information to my draft.

3 Q. You don't dispute that he added the
4 information that there was no loyalty anymore in the
5 SNM, right?

6 A. Correct.

7 Q. And that it's "so fucked up"?

8 A. Yes.

9 Q. And that the tabla used to be meaningful,
10 but it isn't anymore?

11 A. Yes. That wasn't an addition. That was
12 something he told me, and is in there.

13 Q. That's right. And that "SNM wasn't what
14 it used to be"?

15 A. Yes.

16 Q. Okay. And so the truth is that Mario
17 Rodriguez told you in his own words that there was
18 no loyalty anymore in this gang, and that's why
19 he -- at least one of the reasons he wanted to
20 cooperate; isn't that right?

21 A. Yes. He was -- he felt that way, yes.

22 Q. Yeah. And he also told you on more than
23 one occasion that he wanted to work for the
24 Government because he felt that was his best option,
25 right?

1 A. No. I think he came to that conclusion.
2 I don't know that he put it in those words.

3 Q. He never told you it was his best option?

4 A. I assume you're going to refresh my memory
5 with something. I don't recall that, though, no.

6 Q. You remember meeting -- well, I think
7 you've testified about a meeting with Mario
8 Rodriguez and Ron Sanchez --

9 A. Yes.

10 Q. -- and Mark Myers, who was with the New
11 Mexico Corrections Department?

12 A. Yes.

13 Q. And you had -- actually, this is one of
14 the occasions on which you recorded the interview,
15 isn't it?

16 A. It is.

17 Q. Okay. So you had a long recorded -- well,
18 I think it was long. Maybe you don't think it was
19 long. You had a recorded interview with these
20 gentlemen, in which you discussed a variety of
21 topics, right?

22 A. Two. A couple topics.

23 Q. And do you remember when that happened?

24 A. November of 2017. I don't remember the
25 exact date. Maybe the 16th, November 16th. Going

1 off memory here, though.

2 Q. Okay. And you don't remember Mario
3 Rodriguez telling you then that he thought best
4 option was to go into the feds and become a witness?

5 A. I imagine he must have said that to Ronald
6 Sanchez. Did he say it to me? I don't remember it
7 that way.

8 Q. Well, you testified that you were there,
9 right?

10 A. I was there, yes.

11 Q. I mean, you all were sitting in a small
12 room, right?

13 A. Yes.

14 Q. Were you sitting around a table?

15 A. Yes.

16 Q. Were you sitting next to Mario Rodriguez?

17 A. He was nearby at the other end of -- yeah.

18 Q. And was Agent Stemo also there?

19 A. She was. So at the table it was Ronald
20 Sanchez, Mario Rodriguez, and myself. Mark Myers
21 and Nancy Stemo were just kind of standing along the
22 wall. And then Captain Sergio Sapien from the STIU
23 was seated elsewhere in the office, in a chair.

24 Q. Okay. So you and Agent Stemo were there
25 representing the Federal Bureau of Investigation?

1 A. Yes.

2 Q. And then the other personnel that you've
3 talked about, you said Sapien and Myers, they were
4 there from the New Mexico Corrections Department,
5 right?

6 A. That's who they were employed by.

7 Q. And Ron Sanchez was there?

8 A. Yes.

9 Q. And who else was there?

10 A. Mario Rodriguez.

11 Q. And Mario Rodriguez was there. And so you
12 were sitting at a table with Mario Rodriguez and Ron
13 Sanchez?

14 A. Yes.

15 Q. Okay. And that was when Mario Rodriguez
16 said to the two of you, "I think the best option is
17 to go into the feds and become a witness." Right?

18 A. Yes. I think what I'm struggling with is,
19 I don't know if he's saying that to Ron, though,
20 like, "Hey, Ron, the best option is to do this," or
21 if he's representing that's his best option.

22 Q. Okay. But you don't dispute that he said
23 it was the best option?

24 A. Yes.

25 Q. You do dispute it?

1 A. I don't dispute it.

2 Q. Okay.

3 A. I agree with you.

4 Q. Okay. And you also discussed with Mario
5 Rodriguez that as a result of his work for the
6 Government, telling stories on behalf of the
7 Government, that he was going to be able to do easy
8 time, didn't you?

9 A. Well, no.

10 Q. You don't think you talked about that at
11 this meeting?

12 A. No. Because I wouldn't say to somebody,
13 telling stories. I'm not interested in their
14 stories. I don't want to be told stories.

15 Q. All right. Let me put it this way, Agent
16 Acee: At that meeting, where the three of you are
17 at the table, do you remember discussing the subject
18 of doing easy time?

19 A. Easier time. I probably might have said
20 something like that, yes.

21 Q. Okay. And do you remember Mario Rodriguez
22 saying, "It's going to be easy time"?

23 A. Compared to going to a gang yard, I
24 believe that's correct, yes.

25 Q. Do you remember that?

1 A. I don't remember it verbatim, but I
2 remember talking about doing easy time versus going
3 and representing the SNM and the feds. Yes, I
4 remember talking about that.

5 Q. You remember that? Do you recall that
6 Mario Rodriguez didn't like being in solitary
7 confinement? He told you about the paranoia and the
8 violence and the plotting and the scheming, right?

9 A. Yes. He gave me examples of what it was
10 like, and he used me in one of his examples.

11 Q. Okay. And you remember that at this
12 meeting, where the three of you were at the table,
13 when he said, "It's going to be easy time in the
14 fed," he also talked about finally getting out, not
15 having to be in solitary anymore, right?

16 A. Yes.

17 Q. Wouldn't have to be in the hole no more?

18 A. Yes.

19 Q. You remember that?

20 A. I do.

21 Q. And he was -- you were -- the three of you
22 were having this group conversation, I think you
23 testified, at the request of Ron Sanchez, right?

24 A. Yes.

25 Q. And so this conversation came to be --

1 these statements from Mario Rodriguez were
2 descriptions of how good it could be if you become a
3 government witness, right? That's what he's trying
4 to tell Ron Sanchez?

5 A. He injected a lot of his opinion, yes.

6 Q. Right.

7 A. And I didn't stop him.

8 Q. You didn't stop him because it's true,
9 right?

10 A. I don't know. I mean, I've never been in
11 a prison gang or in solitary confinement. So I have
12 heard other prison gang members represent, you know,
13 PC yards and WITSEC as being easier time than being
14 on a gladiator yard or a gang yard, yes.

15 Q. Well, you would agree with me that Mario
16 Rodriguez is pretty excited about the fact that
17 whatever time he's got do -- and we'll talk about
18 that -- is going to be easy time in Tucson or in
19 Florida, right? You remember him saying that?

20 A. Something like that. He's excited he
21 doesn't have to pick up a shank anymore and be a
22 gang member.

23 Q. Well, that's not what I asked you. I
24 asked you if he was excited about going to Tucson or
25 to Florida?

1 A. For those reasons.

2 Q. Yeah. Because he's going to get contact
3 visits, right? He said that?

4 A. I don't know.

5 Q. You don't remember that?

6 A. He may have said something like that.

7 Q. I know it's been a little while, but you
8 don't remember how excited he was, and how he was
9 trying to pump Ron Sanchez up, telling him, "You go
10 to Tucson or Florida, you get contact visits. You
11 don't have to be in the hole. It's a whole other
12 deal"?

13 A. Well, Mr. Rodriguez is pretty stoic. I
14 don't know that I'd say he's excited. I agree with
15 you that he talked about that kind of stuff. Maybe
16 he was excited. I don't know him real well.

17 Q. You'd agree with me that as part of his
18 pitch, he said, "I'm going to get contact visits
19 when I go to Tucson or Florida"?

20 A. I believe he did say that.

21 Q. Would you like to see the transcript?
22 Would that help you remember?

23 A. I'll take your representation.

24 Q. All right. So Mario Rodriguez is not even
25 close to the only government witness on Baby Rob's

1 list that you looked at earlier, right? There were
2 a bunch?

3 A. There were a bunch.

4 Q. And we talked about Billy Cordova, that
5 he's on that list?

6 A. Yes.

7 Q. Can you tell me when you first learned
8 about Billy Cordova's involvement in the criminal
9 activity?

10 A. Early on in the investigation I put, or
11 caused the Bureau to put together an organizational
12 chart, or not even an organizational, just who do we
13 know that's SNM. And I had faces, names, and dates
14 of birth. I think he was in on some of the original
15 stuff. Because we were targeting everybody SNM.

16 Q. Okay. And when you talk about some of the
17 original stuff, and making that chart, did you use
18 this list of 167 people from Baby Rob in your chart?

19 A. No.

20 Q. Okay. So are you going back farther in
21 time?

22 A. Yes.

23 Q. So when did you make that chart?

24 A. I initiated the investigation in March
25 2015. Within weeks or a month, we would have had a

1 group of analysts already populating charts and
2 target lists and target packets.

3 Q. Okay.

4 A. Right away.

5 Q. Okay. Was Billy Cordova on your radar in
6 March 2015?

7 A. I think we knew him as SNM, but he wasn't
8 on my radar in the first phase. I had him in a
9 later phase.

10 Q. Okay. And the first indictment comes in
11 at the end of 2015, right?

12 A. Correct.

13 Q. And that's when you testified that you and
14 Agent Sainato and others sat down with Baby Rob's
15 brother, Roy Martinez, right, December 17, 2015?

16 A. You use that term loosely, right? Because
17 they're not brothers. Carnals? Is that what we're
18 saying?

19 Q. Do you want to call them carnals?

20 A. I don't, but that's the only way they're
21 going to be brothers.

22 Q. You sat down with Roy Martinez in December
23 of 2015. Do you remember?

24 A. I don't. I remember meeting him, but
25 after the takedown. I interviewed him sometime

1 after the takedown.

2 Q. Okay. But it is your testimony that you
3 were present when Agent Sainato took copious notes
4 at that interview with Roy Martinez, right?

5 A. I was present.

6 Q. And Roy Martinez is known as Shadow?

7 A. Yes.

8 Q. And you heard the prosecutor earlier this
9 morning call him a "big leader"?

10 A. I might have missed that part where she
11 said about Baby Rob and him, but he's a leader.

12 Q. Okay. It's your testimony that he's a
13 leader. And is he a leader on a par with Baby Rob,
14 real high up in the organization?

15 A. Yes. I don't think he was as well liked,
16 but he was a leader at one time.

17 Q. And he disgorged a lot of information with
18 you and Agent Sainato, didn't he?

19 A. Yes.

20 Q. And if you hadn't already had Billy
21 Cordova on your radar in 2015, you certainly did
22 after you met with Shadow, Roy Martinez, right?

23 A. To be clear, there is a lot of people on
24 the radar. I mean, all SNM was on the radar. So
25 Billy was on the radar in the earliest stages, as

1 were probably 100 or 150 guys.

2 Q. 167 guys on Baby Rob's list, right?

3 A. I didn't count them, but that's what you
4 said.

5 Q. And so when the FBI sat down, was this the
6 first time that you talked to Shadow, Roy Martinez,
7 December 17, 2015? And I'll represent to you -- let
8 me just represent to you, Agent Sainato's notes that
9 you looked at reflect a date of December 17, 2015.
10 Do you have any reason to dispute the accuracy of
11 that date for that interview?

12 A. No.

13 Q. Do you know if that's the first time that
14 you sat down with Shadow?

15 A. It's the first time I did.

16 Q. Do you know if the FBI talked to him
17 before that?

18 A. Everybody was interviewed or attempted to
19 be interviewed on December 3rd, when we did the
20 takedown.

21 Q. Okay. So two weeks later, you and Agent
22 Sainato debriefed Roy Martinez?

23 A. Yes.

24 Q. And part of your -- part of that debrief
25 covered Billy Cordova rather extensively, didn't it?

1 A. I don't recall.

2 Q. Do you remember learning anything about
3 Billy Cordova during the course of that debrief?

4 A. I've learned a lot about Billy Cordova in
5 a lot of debriefs. I don't know exactly what was
6 talked about in that one.

7 Q. If you took a look at Agent Sainato's
8 notes, would that help you recall the specifics of
9 what you discussed about Billy Cordova with Roy
10 Martinez?

11 A. I prefer the 302, if I have a choice.

12 Q. I'm asking about the notes.

13 A. If that's all you're going to let me look
14 at, I'll look at them.

15 Q. And I can definitely provide the 302 for
16 you, as well.

17 A. I just prefer the 302, because it's going
18 to be more in-depth in detail.

19 MS. FOX-YOUNG: Your Honor, may I
20 approach?

21 THE COURT: You may.

22 BY MS. FOX-YOUNG:

23 Q. Agent Acee, first, I'm just going to have
24 you take a look at these notes. Does this refresh
25 your memory as to your discussion about something

1 involving Billy Cordova?

2 A. Yes.

3 MR. CASTELLANO: Could we get a Bates
4 stamp for this document, please?

5 MS. FOX-YOUNG: 42980, and 42974 to 42975.

6 BY MS. FOX-YOUNG:

7 Q. All right. Agent Acee, I'm also showing
8 you the report generated by Agent Sainato,
9 presumably with the assistance of these notes that
10 you've looked at.

11 A. Okay.

12 Q. Agent Acee, having looked at these
13 documents, do you have some recollection now of what
14 the FBI learned about Billy Cordova on December 17,
15 2015?

16 A. Yes.

17 Q. What was that?

18 A. That Billy Cordova and Roy Martinez did
19 some time together when they were incarcerated
20 together. Billy Cordova, according to Roy Martinez,
21 told Roy that he shot Sammy Chavez over \$100 drug
22 debt owed to Gerald Archuleta. In the notes,
23 there's an indication that was highlighted that
24 said -- what I interpret from the notes is that it
25 said who's on the streets that might be able to

1 conduct the hit. And Billy Cordova was one of the
2 names.

3 Q. Okay. And so Roy Martinez told you and
4 Agent Sainato that Billy Cordova shot Sammy Chavez,
5 right?

6 A. He told us that Billy told him that.

7 Q. Right. And so Agent Sainato's notes
8 reflect, "Billy shot him, told Shadow," right?

9 A. Yes.

10 Q. Okay. And you remember -- I think it was
11 Friday of last week -- that Billy Cordova testified
12 that he didn't shoot Sammy Chavez, right?

13 A. Correct.

14 Q. And Billy Cordova also told you that he
15 didn't shoot Sammy Chavez?

16 A. Correct.

17 Q. Okay. But you learned in December 2015
18 that he apparently told somebody else that he shot
19 Sammy Chavez?

20 A. According to that person, yes.

21 Q. Okay.

22 THE COURT: Ms. Fox-Young, would this be a
23 good time for us to take our lunch break?

24 MS. FOX-YOUNG: Yes, Your Honor.

25 THE COURT: Be patient with me, ladies and

1 gentlemen of the jury. We're taking our first lunch
2 break during the defendants putting on evidence in
3 this case, so I'm going to remind you of a few
4 things that are especially important.

5 Until the trial is completed, you're not
6 to discuss this case with anyone, whether it's
7 members of your family, people involved in the
8 trial, or anyone else, and that includes your fellow
9 jurors. If anyone approaches you and tries to
10 discuss the trial with you, please let me know about
11 it immediately.

12 Also, you must not read or listen to any
13 news reports of the trial. Again, don't get on the
14 internet and do any research for purposes of this
15 case. And finally, remember that you must not talk
16 about anything with any person who is involved in
17 the trial, even if it doesn't have anything to do
18 with the trial.

19 If you need to speak with me, simply give
20 a note to one of the Court Security Officers or
21 Ms. Standridge.

22 I am going to repeat these a little bit
23 more as we transition in this case this week, but if
24 I don't, do keep them in mind each time we do take a
25 break.

1 All right. We'll be in recess for about
2 an hour.

3 All rise.

4 (The jury left the courtroom.)

5 THE COURT: All right. We'll see y'all in
6 about an hour.

7 (The Court stood in recess.)

8 THE COURT: All right. Let's go on the
9 record. I think Ms. Standridge said that you,
10 Ms. Jacks, wanted to call some witnesses out of
11 order and you need to talk to the Government here?

12 MS. JACKS: I haven't had a chance to ask
13 them. Yes.

14 THE COURT: All right. Why don't you do
15 that now. That would probably be the best use of
16 time. So is everyone agreeable? Is the Government
17 agreeable?

18 MS. JACKS: I think they're thinking about
19 it, Your Honor.

20 THE COURT: They're thinking about it?
21 All right. While they're huddling, I did get to
22 finish the Government's brief on Mr. Perez' medical,
23 and I'll continue to think about it, but I'm
24 inclined to deny the motion. So I think there are
25 more useful purposes for this information than just

1 sympathy or jury nullification.

2 I haven't had a chance to look through the
3 jury instructions. Whether anybody is interested in
4 a duress, I am sort of skeptical that anybody wants
5 that, but I haven't looked to see. I mean, once you
6 sort of go that direction, you're kind of signaling
7 to the jury that: I did it, but here's the reason I
8 did it.

9 But I can think of other reasons why it
10 goes to the factual voluntariness of the statement.
11 And those factors that we're going to put in the
12 jury instructions. So I'm inclined to allow it.
13 But I'll think about it.

14 MS. ARMIJO: Your Honor, we did think
15 about it, and we just would rather continue and
16 finish with Bryan Acee because, if not, it's just
17 going to give them -- he's already stopped one
18 cross-examination. This would be stopping another
19 cross-examination, just continue to drag him on.
20 We'd rather just finish with him.

21 THE COURT: Well, I think this is largely
22 the defendants' case at this time, so I'm going to
23 defer to them. If they've got witnesses and they're
24 in agreement -- if there is disagreement, then I'll
25 resolve it among the defendants. But if they're

1 agreeable to culling him down, and getting some
2 witnesses out of here, I'll defer to the defendants.
3 Y'all got a disagreement among yourselves, or --

4 MS. FOX-YOUNG: I think the agreement is
5 just that I was going to finish examining Agent Acee
6 and then --

7 THE COURT: And that's when the break
8 would occur?

9 MS. FOX-YOUNG: Yes, Your Honor.

10 MS. JACKS: Correct, Your Honor. My
11 understanding is we are all in agreement, and I
12 appreciate that. I think we've put these witnesses
13 through quite a bit of inconvenience already.

14 THE COURT: All right. We'll let Ms.
15 Fox-Young finish up, and then we'll take a break,
16 and then we'll come back and finish up Mr. Acee at
17 another point.

18 Let me, while -- well, we're out of time.
19 I was going to give you a few case cites to looking
20 at this Count 8 on Mr. Baca, but I'll try to find
21 another time to do that.

22 All rise.

23 (The jury entered the courtroom.)

24 THE COURT: All right. Mr. Acee, I'll
25 remind you that you're still under oath.

1 Ms. Fox-Young, if you wish to continue
2 your direct examination of Mr. Acee, you may do so
3 at this time.

4 MS. FOX-YOUNG: Thank you, Your Honor.

5 THE COURT: Ms. Fox-Young.

6 BY MS. FOX-YOUNG:

7 Q. Agent Acee, before we went to lunch, I
8 think you had just testified that you became -- you
9 were made aware by Roy Martinez, the information
10 that Billy Cordova had told him that he shot Sammy
11 Chavez. Do you remember that?

12 A. Yes.

13 Q. And that that was over a \$100 debt to
14 Gerald Archuleta or Styx?

15 A. Yes.

16 Q. And you also -- you were made aware of
17 information having to do with Billy Cordova and the
18 murder of Sammy Chavez before that interview with
19 Roy Martinez, weren't you?

20 A. Yes.

21 Q. You remember that you did a debrief with
22 Freddie Quintana in the summer of 2015 in August?

23 A. Yes.

24 Q. You learned something similar from him,
25 didn't you?

1 A. I believe so.

2 Q. Do you remember exactly what you learned
3 from Freddie Quintana?

4 A. No, ma'am.

5 Q. Well, if I represented to you that your
6 report indicated that Mr. Quintana told you that
7 Billy Cordova participated in the killing of Sammy
8 Chavez at a park in Albuquerque, would you think
9 that's the truth?

10 MR. CASTELLANO: Your Honor, I object. If
11 she's going to refresh recollection, she can show
12 the witness the document.

13 THE COURT: Why don't you do it the
14 traditional way?

15 MS. FOX-YOUNG: I'm happy to refresh him,
16 Your Honor.

17 THE COURT: All right.

18 BY MS. FOX-YOUNG:

19 Q. So you recall this interview in August of
20 2015. Do you remember talking to Freddie Quintana
21 about Billy Cordova?

22 A. No.

23 Q. Okay. Will it help you remember if I show
24 you your 1023 form?

25 A. Yes, ma'am. Thank you.

1 Q. So, Agent Acee, just take a look at that
2 section that I've highlighted with regard to Billy
3 Cordova.

4 A. Okay.

5 Q. Does that help you remember the
6 conversation that you had with Freddie Quintana
7 about Billy Cordova and the Sammy Chavez murder?

8 A. Yes.

9 Q. What did you learn about Billy Cordova's
10 involvement in the murder?

11 A. Quintana told me that he believed Cordova
12 killed Sammy Chavez and left him in a park in
13 Albuquerque.

14 Q. And he told you a little bit more than
15 that, didn't he, about what Cordova told him?

16 A. Could you point it out to me, ma'am?

17 Q. Did he tell you that Cordova actually
18 admitted the murder to him?

19 A. Yes.

20 Q. And you included that in your report.
21 Now, I don't want to confuse anybody. I told you
22 this is a 1023 report. That's different than a 302
23 report, right?

24 A. It is.

25 Q. In layman's terms, can you tell me what

1 the difference is?

2 A. Sure. Once a person is opened as an
3 informant, we'll still write it in a 302. But we
4 also include it in a specific report that's just
5 attributed to that informant, and that form happens
6 to be a 1023. So oftentimes you'll see where I have
7 a 302, and the 1023 matches it exactly. And we're
8 just duplicating it so that -- it's just a Bureau
9 procedure to make sure that it's also listed under
10 that informant, in their informant file.

11 Q. Okay. And this information happened to be
12 contained in your 1023, right?

13 A. Yes, ma'am. Yes.

14 Q. And you also learned from at least one
15 other person -- maybe more -- but at least one other
16 person in the course of your investigation in 2015,
17 about how and why Billy Cordova was involved in the
18 murder of Sammy Chavez. Do you recall there was
19 another person?

20 A. No.

21 Q. You don't recall discussing Billy Cordova
22 and the Sammy Chavez murder with anyone?

23 A. I've done that with a lot of people. But
24 I'm just not sure which one you're referring to.

25 Q. Tell me who else you remember talking to

1 about Billy Cordova's involvement in the murder of
2 Sammy Chavez.

3 A. Well, in trying to sort out the Sammy
4 Chavez murder, which is still unsolved, there are
5 usually three or four names that I bring up when I
6 talk to SNMers. Billy is one of them.

7 Q. And I'm just asking specifically. You
8 have ascertained information from sources about
9 Billy Cordova's involvement in the Sammy Chavez
10 murder, correct?

11 A. Yes.

12 Q. And one of those sources is Shadow, Roy
13 Martinez?

14 A. Correct.

15 Q. And one of those sources is Freddie
16 Quintana, who told you and the FBI that Billy
17 Cordova admitted to murdering Sammy Chavez, right?

18 A. Yes.

19 Q. And do you remember -- and I know it's
20 been a while, but do you remember any other specific
21 source who told you that Billy Cordova killed Sammy
22 Chavez?

23 A. Not off the top of my head, no.

24 Q. Do you remember any specific source who
25 told you that Billy Cordova bragged about killing

1 Sammy Chavez?

2 A. Not off the top of my head.

3 Q. If I showed you a report based upon your
4 meeting with Sammy Griego in December 2015, would
5 that help refresh your memory?

6 A. Yes, ma'am.

7 MS. FOX-YOUNG: Your Honor, may I
8 approach?

9 THE COURT: You may.

10 A. Okay.

11 BY MS. FOX-YOUNG:

12 Q. So having looked -- and this is your
13 report, right?

14 A. I just need to look at that second page.
15 I think so. It's an FBI report.

16 THE COURT: While he's looking at that,
17 let me see counsel up here at the bench.

18 (The following proceedings were held at
19 the bench.)

20 THE COURT: When I'm looking at these jury
21 instructions, is the red line version the one that
22 y'all agree on? Those changes you agree on?

23 MS. JACKS: Here's the situation: The
24 instructions outlined in the letter, in answer to
25 your question, we all have agreed on.

1 THE COURT: The ones in the letter and the
2 red line is what?

3 MS. JACKS: The additional instructions --
4 there are red lines throughout. The numbers we've
5 agreed on in the letter we've agreed on. The other
6 red-lined ones, ones that we haven't agreed on,
7 we're in the process of reviewing and attempting to
8 agree.

9 THE COURT: Okay.

10 MR. CASTELLANO: So there is no current
11 agreement on the other red-lined items that are not
12 in the letter.

13 THE COURT: Okay.

14 MS. JACKS: And the reason we left the red
15 line in there is so that the Court could see the
16 changes that are being proposed.

17 THE COURT: Okay. And do you think that
18 y'all may agree to some of those?

19 MR. BECK: I think we may.

20 THE COURT: But the red lines are largely
21 the defendants' proposals?

22 MS. JACKS: They are.

23 MR. CASTELLANO: They are the defendants'
24 proposed changes.

25 MR. VILLA: The defendants all agree.

1 It's just getting the Government --

2 MS. JACKS: That was Saturday's work.

3 THE COURT: Thank you.

4 (The following proceedings were held in
5 open court.)

6 THE COURT: All right. Ms. Fox-Young.

7 MS. FOX-YOUNG: Thank you, Your Honor.

8 BY MS. FOX-YOUNG:

9 Q. Agent Acee, you took a look at this report
10 from December 15, 2015. And it's your report,
11 right?

12 A. Yes, it is.

13 Q. And this was based upon a debrief that you
14 did with Sammy Griego?

15 A. Yes.

16 Q. And having looked at it now, you remember
17 talking to Sammy Griego about Billy Cordova's
18 involvement in the murder of Sammy Chavez?

19 A. Yes.

20 Q. And what did you learn from Sammy Griego?

21 A. Griego reported to me that, while housed
22 with Billy Cordova at the RDC, which is the Central
23 New Mexico Correctional Facility in Los Lunas, I
24 believe in 2011, that Cordova said that he killed
25 Sammy Chavez, because Chavez had messed with some of

1 Cordova's girls. I'm not sure what that means.

2 Q. Right. So Sammy Griego told you that
3 Billy Cordova actually bragged to him that he had
4 killed Sammy Chavez for a personal reason, because
5 he'd messed with one of his girls, right, or some of
6 his girls?

7 A. All of that is correct, except I don't
8 know if it's personal or not.

9 Q. Okay. You don't know if it's personal
10 that it was one of Cordova's girl, correct?

11 A. Everything else I would agree with.

12 Q. You might not characterize that as
13 personal?

14 A. Correct.

15 Q. But you do agree that Billy Cordova --
16 according to Sammy Griego, Billy Cordova bragged
17 about killing Sammy Chavez?

18 A. Yes.

19 Q. And you remember that when Billy Cordova
20 took the stand last week, he absolutely denied
21 shooting Sammy Chavez? Do you remember that?

22 A. Yes.

23 Q. And he also said something along the lines
24 that he would never take credit for something he
25 didn't do. Do you remember that?

1 A. I think he said that.

2 Q. With regard to murders, right?

3 A. Yes.

4 Q. It was his testimony that he wouldn't brag
5 about murdering Sammy Chavez if he hadn't done it,
6 right?

7 A. Yes.

8 Q. But you had information -- sitting here
9 today, you and the FBI have information from sources
10 like Sammy Griego that apparently Billy Cordova did
11 brag about murdering Sammy Chavez, right?

12 A. According to Griego, yes.

13 Q. Right. And, in fact, in your experience,
14 you said you've done at least 50 interviews related
15 to this case, right?

16 A. At least. Maybe closer to 100. I'm not
17 sure.

18 Q. And some of these sources you've talked to
19 upwards of half a dozen times, right?

20 A. Yes.

21 Q. Some many more times than that?

22 A. I don't think so.

23 Q. In any event, you've become awfully
24 familiar with how things work among these gang
25 members in the New Mexico prison system, right?

1 A. Yes.

2 Q. And you've actually learned that it's not
3 terribly uncommon to brag about criminal conduct
4 that you didn't participate in, right?

5 A. I can think of a couple of situations
6 where guys have done that; and then, when I later
7 interviewed them about it, to include playing the
8 recordings, they said they were bragging about
9 something they hadn't done.

10 Q. Right. But you heard Billy Cordova's
11 testimony that that doesn't happen, right?

12 A. Did he say that? He said that --

13 Q. I'm asking what you remember him saying
14 about bragging about murders that he didn't do.

15 A. I believe he said that wasn't a good idea,
16 that people shouldn't do that, and that he wasn't
17 involved in -- he didn't brag about Sammy Chavez.

18 Q. But that's not what Sammy Griego says,
19 right?

20 A. Correct.

21 Q. And that's not what Freddie Quintana says,
22 right?

23 A. Right.

24 Q. And are you also aware, based upon FBI
25 reports and work that the FBI has done in this case,

1 that some people also say Billy Cordova bragged
2 about killing Shane Dix?

3 A. I recall that coming up at least one time,
4 yes.

5 Q. At least one source told you, "Billy
6 Cordova bragged to me, or to somebody, that he
7 killed Shane Dix"?

8 A. I just remember that that rumor was out
9 there and that was something that we looked at.

10 Q. Do you think Billy Cordova killed Shane
11 Dix?

12 A. No.

13 Q. How do you know that?

14 A. In summary, through the totality of our
15 investigation. But another -- the person who called
16 it has pled guilty to that. And Mario Montoya took
17 me out to the scene of where that murder was, and
18 walked us through it. So that's two people that
19 have admitted their responsibility in it. And then
20 a third one is still facing trial.

21 Q. So in your estimation, if Billy Cordova is
22 talking -- is telling people that he killed Shane
23 Dix, he's bragging about a murder he didn't do?

24 A. If he's out there doing that, yeah. I
25 don't put him at the scene. In fact, I think he's

1 in custody at the time.

2 Q. And with respect to Sammy Chavez, do you
3 think Billy Cordova shot Sammy Chavez?

4 A. I did for a long time. But the problem
5 is, Corrections has him in custody at the time of
6 the murder.

7 Q. Right. So if Sammy Griego and Freddie
8 Quintana have him telling them that he bragged about
9 the murder, and has taken ownership for it, he'd be
10 bragging about a killing he didn't do, right?

11 A. If all of that is correct, yeah.

12 Q. Okay. And I think I asked you, through
13 the course of your investigation you have learned
14 that people do -- people in the SNM, people in the
15 New Mexico prison system, do lay claims to things
16 that they didn't do, right?

17 A. It has happened, yes. It's not really
18 common.

19 Q. Oh, it's not common?

20 A. I don't think it's common. But I do agree
21 with you that it's happened.

22 Q. Okay. And you're aware that sometimes
23 people do that, brag about doing things they didn't
24 do, for self-preservation?

25 A. That's probably a reason, yes.

1 Q. You know that you've testified before
2 today, and answered questions along these lines with
3 regard to people in the SNM bragging about things
4 they didn't do, right?

5 A. I've testified a whole bunch in this case.
6 I've probably talked about that. I'm not sure.

7 Q. Let me ask you this: Do you remember
8 testifying in front of Judge Browning in this case
9 on questioning by Marc Lowery, where Marc Lowery
10 asked you: You had mentioned about consequences for
11 taking credit for something you didn't do?

12 And you answered, "Yes."

13 Do you remember that?

14 A. Yes.

15 Q. And then you were asked: And what are
16 some of the types of consequences? You said there
17 were beatdowns, or what else?

18 Do you remember that question?

19 A. Yes.

20 Q. And you remember that you answered, "Well,
21 in some cases some of the members told me they
22 didn't really see it as a problem, and that it's a
23 common occurrence to take credit for something they
24 didn't do, or to brag."

25 Do you remember that?

1 A. Yeah, I agree with that.

2 Q. You're not walking back that testimony
3 today?

4 A. No. I think we should clarify --

5 Q. Thank you, Agent Acee.

6 So we're talking about Sammy Chavez and we
7 talked about Shane Dix, and Billy Cordova bragging
8 about those murders. Are there any other murders
9 that you know of that Billy Cordova bragged about,
10 that he didn't do, other than those two?

11 A. I can't think of any, no.

12 Q. And so I think you testified that at the
13 end of 2015, the first indictment in this case came
14 down, right? That was the first phase?

15 A. Yes.

16 Q. And at the end of 2015, you went to see
17 Billy Cordova at the Metropolitan County Detention
18 Center, right?

19 A. I thought it was early 2016.

20 Q. January 2016?

21 A. Yes, ma'am.

22 Q. Okay. And so at the time that you went to
23 see Billy Cordova, you testified that you were at
24 MDC to see somebody else?

25 A. Yes.

1 Q. And you happened to engage with Billy
2 Cordova on that same day?

3 A. Yeah. We didn't plan it, but we needed to
4 salvage -- the way in which the correctional
5 officers pulled out an informant we had up there,
6 comprised the informant. So I asked them to pull
7 everybody in the SNM pod, so it looked like we were
8 talking to everybody.

9 Q. And you had Agent Neale with you?

10 A. Yes, I believe.

11 Q. And you had tasked Agent Neale with
12 writing up what are called overt acts for the RICO
13 case, right?

14 A. Yes, ma'am.

15 Q. And how many overt acts got ultimately
16 written up for that case? Do you know?

17 A. In the superseding indictment, I think
18 there is -- actually, I don't remember off the top
19 of my head -- 256 maybe, 254.

20 Q. More than 250?

21 A. Yes.

22 Q. And as of the time, the day that you met
23 Billy Cordova, in January 2016, one of those overt
24 acts that you were looking at was on Sammy Chavez,
25 right?

1 A. Yes. I was looking at Billy Cordova for
2 that.

3 Q. And one was Shane Dix?

4 A. I'm not sure it was. We ruled him out
5 pretty quick.

6 Q. Let's go back to Sammy Chavez. I know
7 it's your testimony that Billy Cordova did not pull
8 the trigger and kill -- as far as you know -- and
9 kill Sammy Chavez, but you think he was involved in
10 that murder, right?

11 A. Yes, I think he gave some advice to the
12 person that shot him. I mean, it's still open.
13 We're looking at a lot of angles on that.

14 Q. And you were looking at charging him; that
15 was one of the overt acts for the RICO case, was the
16 Sammy Chavez murder?

17 A. You mean that loosely, like in planning
18 it? Those could be overt acts, and we would
19 definitely include those.

20 Q. I think you've previously testified that
21 you were looking at Billy Cordova on the Sammy
22 Chavez murder, in terms of that RICO case and those
23 overt acts. I'm just confirming that.

24 A. I have always looked at Billy Cordova in
25 that homicide, yes.

1 Q. And you were also looking at Billy Cordova
2 for his assault on his wife, Crystal Salas, which
3 you thought was gang-related, right?

4 A. Yes.

5 Q. And that was also an overt act?

6 A. Yes.

7 Q. And that's the case where Mr. Cordova
8 punched Crystal Salas repeatedly, broke ribs, caused
9 internal bleeding; is that right?

10 A. I don't know what the specific injuries
11 were, but he beat her up pretty good.

12 Q. Well, you heard his testimony.

13 A. I heard him say "Yes" a lot to the
14 questions he was asked, yes, about that. I don't
15 actually know what the injuries to her were.

16 Q. Okay. Well, you heard him admit that he
17 inflicted those injuries?

18 A. Yes.

19 Q. On the stand last week?

20 A. Yes.

21 Q. So Agent Neale had included that as one of
22 the overt acts that you were looking at?

23 A. Yes.

24 Q. And you also knew, didn't you, that Billy
25 Cordova had waterboarded people? He described for

1 the jury what that consisted of?

2 A. I didn't know that until he told us that.

3 Q. Okay. You learned that later?

4 A. Yes.

5 Q. And you learned that he had wanted Javier
6 Molina hit?

7 A. That was not something I knew when we were
8 working on the overt acts.

9 Q. What other criminal conduct did you know
10 about with regard to Billy Cordova in January 2016?
11 How many other murders?

12 A. I wanted to include the murder that he was
13 at MDC on, which he went to trial, and I think it
14 was a manslaughter. I considered that gang-related,
15 based on what I knew about it at the time.

16 Q. And who was the victim in that case?

17 A. I don't recall the man's name, but it was
18 someone that was in a feud with one of Billy's
19 family members.

20 Q. Was that Ray Gurule?

21 A. I'm sorry, I don't --

22 Q. So Sammy Chavez and that murder. What
23 others?

24 A. Anything that was in his criminal history
25 we were looking at including as overt acts, if we

1 thought they were gang-related or could further his
2 status in the gang.

3 Q. Crystal Salas' assault, correct?

4 A. Yes.

5 Q. Do you remember any others specifically?

6 A. Some drug dealing. But if you're asking
7 me specifically about murders, I think that's it.

8 Q. What drug dealing activity were you going
9 to include in the RICO case with regard to Billy
10 Cordova?

11 A. Any drug dealing we could prove.

12 Q. Did you have some?

13 A. Yes.

14 Q. And what was that?

15 A. I'd have to look at his NCIC, his criminal
16 history again.

17 Q. But you know that, in January 2016, you
18 were going to go after him for dealing drugs in this
19 RICO case?

20 A. As well as other crimes.

21 Q. What else?

22 A. Any assaults that we could articulate.
23 And this is just the FBI presenting this. Of
24 course, it goes through a bunch of approvals. But
25 what I had tasked Neale with was any crime that we

1 reasonably could tie to gang activity or furthering
2 his reputation to either join the gang or stay in
3 the gang, mainly.

4 Q. Okay. And so we talked about one assault,
5 that was beating up his wife, and that you
6 considered furthering his reputation, right?

7 A. Given the circumstances, yes. Normally,
8 we wouldn't include a domestic violence, but this
9 was specific because his wife had engaged in a
10 romantic relationship with another member. We knew
11 that historically had great significance to the SNM,
12 and we believed that he beat her up because of that.

13 Q. So you were writing that up as one of the
14 overt acts?

15 A. Yes.

16 Q. Were there other assaults? And if you
17 don't remember specifically, that's fine. But do
18 you remember if there were others?

19 A. I think that there were quite a few overt
20 acts. We were also looking at letters, inter-prison
21 letters with other members.

22 Q. Okay. And at that point, in the course of
23 this case, the RICO case, death penalty was on the
24 table, right? At the beginning of 2016, it was a
25 death case?

1 A. For other -- for VICAR defendants? I
2 believe it was.

3 Q. The RICO case.

4 A. Well, no, ma'am. I mean, the RICO case
5 hadn't been charged, so death penalty is not on the
6 table.

7 Q. The VICAR case was a death penalty case?

8 A. Yes, it was still on the table.

9 Q. And you were getting ready to charge the
10 RICO case the same way? I understand that you and
11 the FBI don't make the charging decision.

12 A. So in the RICO case, yes, any allegation
13 where there's death, where there's a murder, the
14 death penalty could be applied.

15 Q. So, in January 2016, you were looking at
16 Billy Cordova for at least two murders, multiple
17 assaults, drug dealing, and other criminal conduct
18 for this RICO case, for which the death penalty was
19 on the table, correct?

20 A. No. All of that is correct except the
21 death penalty part.

22 Q. Because it hadn't been charged yet?

23 A. Right. And, I mean, that decision is made
24 by the Attorney General himself or herself.

25 Q. I understand that you don't make that

1 decision. But at that time, there were SNM
2 defendants facing the death penalty?

3 A. Yes.

4 Q. And so you went with Billy Cordova, and I
5 think your testimony at a prior hearing was that,
6 upon meeting with him and talking about what he
7 might be able to do for the Government in this case,
8 you directed Agent Neale to stop writing up overt
9 acts in the RICO case on Billy Cordova. Do you
10 remember that testimony?

11 A. At some point I did. I don't know that it
12 was at the initial meeting. But at some point I
13 definitely did.

14 Q. Maybe soon after?

15 A. Yes.

16 Q. And so is it your testimony today, to this
17 jury, that even though the death penalty was on the
18 table for the SNM defendants, you never mentioned
19 that to Billy Cordova?

20 A. I don't think I've ever said that.

21 Q. You don't think you have? You heard Billy
22 Cordova's calls last week with his family, where he
23 told the people he's closest to in the world that
24 the federal government did threaten him with the
25 death penalty? You heard that, right?

1 A. I did.

2 Q. And the death penalty was on the table in
3 January 2016, but it's your testimony you never said
4 anything about that?

5 A. Well, I think you're telling me I never
6 said that.

7 Q. I'm just asking you what your testimony
8 is.

9 A. I don't know that I came out and said
10 that.

11 Q. Is it also your testimony that you never
12 mentioned a life sentence, the possibility of a life
13 sentence to Billy Cordova?

14 A. I'm not sure.

15 Q. And you heard those calls where he told
16 his family that, right?

17 A. I think -- yes, I think he did say that.

18 Q. Wouldn't it be pretty important to
19 remember whether or not you told a government
20 witness that they could be facing the death penalty
21 or a life sentence?

22 A. Not necessarily.

23 Q. It's not an important detail?

24 A. Well, if Billy Cordova were the only
25 person I interviewed, I'd probably remember a lot

1 more about my conversation. But, as I said, I've
2 interviewed somewhere between 50 and 100 of these
3 guys. And each time one of them gets out of prison,
4 I'm at their parole office to meet them and talk to
5 them.

6 Q. Okay. But you heard what he told his
7 family soon after the meeting with you, right; that
8 you did threaten him with the death penalty and with
9 a life --

10 A. I --

11 Q. No, I'm just asking if you heard that
12 call.

13 A. Where I threatened him? No, I didn't hear
14 that.

15 Q. The federal government threatened him?

16 A. He did mention that.

17 Q. And is it your testimony that you never
18 threatened to charge his wife, Crystal Salas?

19 A. No, I've never mentioned at all anything
20 like that.

21 Q. But you heard his testimony last week, and
22 you heard the call where he said he was doing what
23 he was doing because of threats on his -- partly
24 because of threats on his wife, his family? Do you
25 remember that?

1 A. Not real clearly. But he mentioned
2 something like that. I don't know if that was
3 threats from us or threats from the gang.

4 Q. I'm just asking if you remember hearing
5 that telephone call?

6 A. I remember hearing a telephone call, yes.

7 Q. So even though you had evidence that Billy
8 Cordova was implicated in multiple murders and
9 assaults and drug dealing and other criminal
10 activity, it all was washed away after you met with
11 him in January 2016, right?

12 A. No.

13 Q. You didn't tell him that you weren't going
14 to charge him in the RICO case?

15 A. Not at that time, no, because I still
16 pushed to charge him. Nor did I have evidence at
17 that time of the homicides you just mentioned. I
18 had informants saying that they'd heard that.
19 That's not evidence.

20 Q. Do you remember your earlier testimony
21 that you told Billy Cordova -- that you told Agent
22 Neale in front of Billy Cordova to stop writing up
23 overt acts because he wouldn't be charged in the
24 RICO case based upon his work for the Government?
25 You don't remember that?

1 A. That's not how I said it, no.

2 Q. How did you say it?

3 A. I introduced him to Agent Neale, and I
4 told him, "This is the guy I've assigned to work the
5 RICO on you."

6 Q. And you certainly left Billy Cordova with
7 the impression that if he were to work for the
8 Government, all that would wash away, didn't you?

9 A. No. I got Billy Cordova an attorney
10 because I wanted to charge him.

11 Q. Okay. And so after that meeting at the
12 Metropolitan Detention Center, you later met with
13 him at the FBI office in Albuquerque, right?

14 A. Yes.

15 Q. And who was at that meeting?

16 A. MDC staff brought him there; STIU staff
17 took him to the prison. So those two entities were
18 there, as well as FBI agents.

19 Q. Okay. And that's when you talked to him
20 in greater detail about what he might be able to do
21 for the federal government, right?

22 A. When I tasked him with doing recordings at
23 the penitentiary.

24 Q. Okay. And that's when you made
25 arrangements to place Billy Cordova in a cell in

1 solitary confinement right next to Rudy Perez,
2 right?

3 A. No.

4 Q. You didn't make those arrangements?

5 A. Not the way you're categorizing it, no.

6 Q. When did you make the arrangements?

7 A. I asked that he be placed near Herrera and
8 Perez. And that's the extent of it. How the
9 Department of Corrections maneuvered that, I didn't
10 have input on.

11 Q. Okay. And you recall testifying earlier
12 today that Eric Duran's placement was at your
13 request, right?

14 A. No. The return of Anthony Ray Baca.

15 Q. But my question is: Do you remember
16 testifying that Eric Duran's placement was at your
17 request?

18 A. No.

19 Q. Well, I can go back and pull the
20 transcript.

21 A. Baca's was, not Duran's. Duran was
22 already there.

23 Q. The placement of Baca next to Duran was at
24 your request?

25 A. Yes.

1 Q. Okay. And the placement of Billy Cordova
2 next to Rudy Perez was at your request, right?

3 A. Yes.

4 Q. Okay. So two days after that second
5 meeting with Billy Cordova at the FBI office, Billy
6 Cordova lands at the Penitentiary of New Mexico in a
7 cell next to Rudy Perez, right?

8 A. Correct.

9 Q. And that was in February 2016, right?

10 A. Yes.

11 Q. Did you talk -- you heard Billy Cordova
12 use the phrase "pressure points" in court, right?
13 The pressure points he used on Rudy Perez?

14 A. I have heard him talk about that.

15 Q. Is that a phrase he got from you, or is
16 that his own language?

17 A. That's his own language.

18 Q. So that's when Billy Cordova used the
19 pressure points on Rudy Perez, right, that period of
20 time? This is Billy Cordova's own testimony. You
21 remember that?

22 A. Yes. I'm just struggling to remember what
23 the pressure points were.

24 Q. Well, I'll remind you. Billy Cordova
25 testified at this trial, and also previously at a

1 hearing where you were present, that he took
2 advantage of the fact that Rudy Perez thought the
3 SNM was going to move on him. And Billy Cordova
4 said he used that -- he used those rumors, he used
5 that information, as a pressure point to extract the
6 information that he wanted from Rudy Perez.

7 Do you remember that? I'm just asking if
8 you remember that testimony; not what you think of
9 it.

10 A. I remember him talking about that.

11 Q. So that happened in February 2016, right?

12 A. That Rudy and Billy were next to each
13 other, yes.

14 Q. And those recordings were made in February
15 2016?

16 A. Yes.

17 Q. Several months later, Billy Cordova was
18 caught having sex with his wife during contact
19 visits, right?

20 A. Yes.

21 Q. That was at the end of 2016 and the
22 beginning of 2017?

23 A. Yes.

24 Q. And we don't know how many times he had
25 sex with his wife while he was in custody with the

1 Department of Corrections, right?

2 A. I think we do.

3 Q. How many times?

4 A. I think it was six.

5 Q. We know six were recorded on camera?

6 A. How else would they have -- I believe it
7 was six.

8 Q. We know there were at least six, right?

9 A. I believe it was six.

10 Q. Well, we don't know what wasn't recorded,
11 right? I think Billy Cordova testified that he did
12 it all the time. They'd find a way. They'd go to a
13 bathroom. He had all kind of ways of having sex
14 with his wife. Do you remember that?

15 A. I remember him saying that inmates had sex
16 with people in the bathroom. I don't know that he
17 said that he did with his wife.

18 Q. Okay. But you know about six times that
19 you can verify because there is video of it, right?

20 A. Yes.

21 Q. And were all six times in front of his
22 children?

23 A. No.

24 Q. How many times in front of his children?

25 A. At least four. I'm just going off

1 recollection of watching the videos.

2 Q. Okay. When did you learn about this
3 misconduct?

4 A. When the Department of Corrections called
5 me and told me about it. And I drafted a 302. I
6 just didn't know I'd be asked about this today, so I
7 don't have it in front of me.

8 Q. Okay. Well, you ultimately closed him as
9 your government witness on January 13, 2017, right?

10 A. Yes, ma'am.

11 Q. And why did you close him?

12 A. He didn't follow instructions.

13 Q. Which instructions did he fail to follow?

14 A. I'd gone up and met with the CHSSs, and I
15 told them I didn't want any more problems up at the
16 penitentiary between each other or between the
17 staff. That instruction specifically. There's not
18 an instruction, you know, in the FBI confidential
19 source manual about having sex with your wife while
20 you're in custody. It doesn't get that specific.
21 But the specific instruction is not to -- to go with
22 the program, and not cause any problems up there.

23 Q. And he didn't do that, right?

24 A. No.

25 Q. And it's important that your informants,

1 that your witnesses do follow instructions, right?

2 A. Yes.

3 Q. It's important that they follow your
4 instructions in the course of carrying out their
5 duties as government witnesses, right?

6 A. Yes.

7 Q. And it's important because you have to be
8 able to rely on the information that they give you,
9 right?

10 A. Yes.

11 Q. Because that's how you build your case,
12 right?

13 A. One of the tools.

14 Q. Because you want to go after people who
15 have done wrong, right? And then you're trying to
16 collect the information that you need to do that,
17 right?

18 A. Yes.

19 Q. And you knew that information would be
20 reliable, right?

21 A. Otherwise, we're wasting our time.

22 Q. And so you didn't want to waste your time
23 anymore with Billy Cordova after January 13, 2017,
24 because he'd broken the rules, right?

25 A. I didn't want to give him any more money.

1 That's why I closed him.

2 Q. Okay. You couldn't trust him anymore
3 after that, right?

4 A. I don't agree with that.

5 Q. Okay. Sitting here today, can you still
6 say that you trust Billy Cordova?

7 A. Yes, to a certain extent.

8 Q. To a certain extent?

9 A. Yes.

10 Q. So you say that you trust Billy Cordova
11 and find him to be reliable?

12 A. Depends what the circumstance is.

13 Q. All right. Well, how about given the
14 circumstance that Billy Cordova did not tell you the
15 truth about -- did not tell you or the prosecutors
16 in this case the truth about his drug use, and
17 continued drug use until just before this trial?
18 And does that cause you to question your trust in
19 him?

20 A. That's one of the areas that causes me
21 concern.

22 Q. Okay. And does it cause you concern to
23 know that Billy Cordova testified last week that his
24 statements before this Court in December about his
25 drug use were untrue, and that he made those

1 statements under oath?

2 A. Yes. Anytime somebody lies under oath,
3 that's a significant problem. It sounded like to
4 me, from what I witnessed, that he was confused
5 about the question, or he had some -- he had some
6 difficulty with that question and understanding it,
7 and only he would know what that was. I don't know.

8 Q. Well, I mean, if you want, we can go back
9 and look at his testimony under oath at the end of
10 last year. But I'll represent to you that he was
11 asked about his drug use, and he testified that he
12 hadn't used drugs in two years; and then we
13 subsequently learned, during the course of this
14 trial, that that was untrue, and that he had been
15 using drugs only weeks before he made those
16 statements in court.

17 Do you remember that?

18 A. If what you're representing is true, then
19 that's a problem.

20 Q. Pretty simple questions, right?

21 A. The way you phrased it, yes.

22 Q. But that's not enough to break your trust
23 in him?

24 A. Ma'am, I have some -- you asked me if I
25 thought he's reliable. In some areas I think he is;

1 and in some areas he's not.

2 Q. Sure. And you have discovered information
3 during the course of your investigation that
4 contradicts a lot of things Billy Cordova has told
5 you, right? Let's just talk about the murder of
6 Sammy Chavez, and what Billy Cordova told this judge
7 and this jury last week, that he'd never brag about
8 it. You learned from other individuals that he did,
9 right?

10 A. According to those people, yes.

11 Q. Okay. Billy Cordova was not the only
12 government witness who declined to follow your
13 rules, right?

14 A. Oh, no, no, he was not.

15 Q. And you, as the case agent in this case,
16 cannot snap your fingers and assure that these
17 government witnesses will not continue to commit
18 criminal conduct, right?

19 A. Absolutely not.

20 Q. And, in fact, that many of them have,
21 right?

22 A. Yeah.

23 Q. I understand that you had already closed
24 Jerry Armenta as a government witness for having sex
25 in the contact room before this trial, right?

1 A. Yes. All the guys that were caught doing
2 that, I closed right away.

3 Q. Is that the only reason Jerry Armenta was
4 closed?

5 A. At that time, yes.

6 Q. At any time?

7 A. Well, if he wasn't already closed when the
8 tablet thing came out, I would have closed him then.
9 And I closed people for that.

10 If it was drugs, anytime I discover a
11 reason to close them, I close them, because I don't
12 want to give them money if they're not following
13 directions.

14 Q. Okay. So upon learning that Jerry
15 Armenta's tablet was used to search child porn,
16 would that be enough for you to close him?

17 A. If he searched child porn and there was
18 child porn, I would have charged him with it. But
19 yes, not only would I have closed him, but I would
20 have charged him.

21 Q. When did you learn about that?

22 A. I learned that the tablets were
23 compromised when Benjamin Clark's attorneys emailed
24 me and said as much. And then I asked to meet in
25 person so I could verify that, and have them explain

1 it to me. So I wrote a report on it. I don't
2 recall the exact date.

3 Q. Okay. Do you remember that Mark Myers
4 with the Department of Corrections summarized those
5 details and filed something in this court with
6 respect to the compromised tablets?

7 A. I'm not sure what he might have written.

8 Q. Okay. Well, I know you said you don't
9 remember when you actually learned that these
10 government witnesses were accessing the internet and
11 searching for child porn. Would it refresh your
12 memory if I showed you the document that Mark Myers
13 generated for the court on that subject?

14 A. It might. I don't know that I've seen it
15 before. I can try it, sure.

16 MS. FOX-YOUNG: Your Honor, may I approach
17 the witness?

18 THE COURT: You may.

19 BY MS. FOX-YOUNG:

20 Q. Agent Acee, have you ever seen this
21 document?

22 A. No.

23 Q. All right. It's pretty short. Why don't
24 you take a minute to look at it and see if it
25 refreshes your memory as to when this all happened?

1 A. It does. Thank you.

2 Q. Okay. Having looked at it, can you tell
3 me when you learned that government witnesses were
4 misusing their tablets and accessing the internet?

5 A. On April 17, 2017.

6 Q. Okay. So that's almost a year ago, right?

7 A. Yes.

8 Q. And you said you learned this because one
9 of the government witnesses' lawyers contacted you
10 and told you, on April 17, 2017, that his client had
11 actually been able to compromise the tablet?

12 A. I don't know that the attorney said it
13 like that. The gist of it is, the attorney
14 contacted me and asked that I go to the detention
15 center with the attorneys -- there were two of
16 them -- and meet with their client to talk about
17 something.

18 Q. So you did that, right?

19 A. I did.

20 Q. On the same day?

21 A. That they asked me? No, it took a couple
22 weeks to schedule it on their part. They had court
23 and stuff.

24 Q. And in order to prove that the tablets had
25 been compromised by these government witnesses, this

1 witness actually sent you an email from his tablet,
2 right?

3 A. Yeah. I didn't believe him, so I asked
4 him to send me an email.

5 Q. Okay. So on that same day, on April 17,
6 2017, you got an email that was sent from one of
7 these tablets, right?

8 A. Yes. I got two emails.

9 Q. So the next day you got another email with
10 a picture of one of the government witnesses inside
11 his cell, right?

12 A. I think it was the same day. It was just
13 like at three or four in the morning, yes.

14 Q. Was that Jerry Montoya?

15 A. No, I think it was Armenta.

16 Q. It was Jerry Armenta?

17 A. Yes.

18 Q. So Jerry Armenta told you, "Hey, look, I
19 took a picture of myself with my tablet, and I can
20 send it to you," right?

21 A. No. Benjamin Clark sent me an email. I
22 didn't ask Armenta for anything. I just woke up and
23 had an email from the guy with a selfie. So, yeah,
24 I deduced that he would do it, too.

25 Q. Okay. And so having learned that last

1 April, what, if anything, did you do?

2 A. I notified the U.S. Attorney's Office.
3 The Sandoval County Detention Center wanted to give
4 me the tablets. But I didn't think I could take
5 them because they belonged to defendants, and there
6 was attorney-client protection. So I didn't take
7 them. I consulted with the U.S. Attorney's Office
8 about it.

9 I started preparing search warrants for
10 the tablets. But then the decision was made that we
11 should bring it up to Judge Browning and have the
12 Court make a determination. And there were some
13 pretrial hearings about that.

14 Q. That's right. And in the course of those
15 pretrial hearings, defense counsel actually asked
16 that these tablets be looked at, right, to see what
17 it meant that they'd been compromised; isn't that
18 right?

19 A. Yes, but not by the FBI. By the
20 Department of Corrections.

21 Q. Well, the FBI, in fact, never looked at
22 these tablets, right?

23 A. The FBI wasn't allowed to look at these
24 tablets. It requires a court order.

25 Q. Well -- and there was a court order that

1 the tablets ultimately be sent to an expert, to look
2 at them, because the FBI hadn't looked at them;
3 isn't that right?

4 A. That is not right, no. The Court ordered
5 that they could be looked at. I visited with
6 defense attorneys, and I said the FBI can do it or
7 their expert can do it. They requested that their
8 expert do it, and I turned them over to the expert.

9 Q. Well, do you recall the representation by
10 the prosecutors in this case that the FBI didn't
11 have enough time, and it wasn't a priority to look
12 at these tablets? Do you remember that?

13 A. What I represented to the prosecutors
14 was --

15 Q. I'm just asking -- you've sat through
16 court as the case agent in this case, right -- and
17 I'll let you finish, Agent Acee -- but I want to
18 know first, do you remember the prosecutors in this
19 case representing to this Court that the FBI didn't
20 have time to look at these tablets, and there were
21 just too many other resource needs, and they weren't
22 going to look at them?

23 A. No.

24 Q. You don't remember that?

25 A. Not the way you're saying it, no.

1 Q. It's your testimony that the FBI couldn't
2 look at them?

3 A. Not without legal process, no. The RCFL
4 won't accept them without a warrant or a court
5 order.

6 Q. Okay. And so the FBI never did look at
7 them?

8 A. No. The decision was made to send them to
9 the defense expert, who could get them done much
10 quicker.

11 Q. Okay. Much faster than the Federal Bureau
12 of Investigation.

13 So having learned on April 17, 2017, that
14 government witnesses in this case were accessing the
15 internet at the Walmart in Sandoval County and
16 getting on Facebook, right --

17 A. That's what he said, yes.

18 Q. -- and trying to communicate with people
19 outside of the prison?

20 A. I learned that today.

21 Q. Well, they communicated with you, right?

22 A. Yes.

23 Q. And you learned through the course of this
24 trial about all the searches for porn and child
25 porn, right?

1 A. I don't believe there has been any
2 searches for child porn. There has been searches of
3 porn.

4 Q. Teen porn. Excuse me.

5 A. There is a significant difference between
6 the two.

7 Q. Okay. You don't classify teen porn as
8 child porn?

9 A. I don't make the classifications. But
10 child porn is illegal to possess, to distribute.
11 Pornography is not. There is a significant
12 difference between the two.

13 Q. I'll recharacterize that. You learned
14 about the teen porn during the course of this trial?

15 A. Yes.

16 Q. And you also recall that as a result of
17 Mr. Myers' filing, all of the defendants in this
18 room had their tablets checked, and it was learned
19 that they were not compromised. Do you remember
20 that?

21 A. The four gentlemen in here's tablets were
22 not compromised.

23 Q. That's right.

24 All right. So getting back to Billy
25 Cordova, you recall his testimony under oath, on

1 December 15, 2017 -- and we've already talked about
2 this -- that the SNM was going to move on Rudy Perez
3 in February 2016, right? You told me that you
4 remember that testimony?

5 A. I remember that there was a rumor, yeah.
6 I don't know that it was that they were going to
7 move on him, but there were concerns about it.

8 Q. You remember his testimony that he thought
9 the SNM was going to move on him, right?

10 A. Rudy's testimony, or --

11 Q. Billy Cordova's testimony.

12 A. I don't remember.

13 Q. You don't remember that?

14 MR. CASTELLANO: At this point, I'm going
15 to object about referring to other testimony in the
16 case. If she has specific questions, I recommend
17 she do that. But not referring to other people's
18 testimony throughout this testimony.

19 THE COURT: Well, she can ask him if he
20 remembers. If he says "No," then he'll have to say
21 "No." If he does remember, then she can build some
22 question off of it. So I'm not going to make a
23 blanket ruling that she can't refer to other
24 testimony, because at times that's been helpful; and
25 other times we're not getting anywhere. But I can't

1 make a blanket decision on that.

2 BY MS. FOX-YOUNG:

3 Q. And Agent Acee, you'll remember quite
4 clearly that two days after that testimony, Billy
5 Cordova had a phone interview with you which was
6 memorialized in another 302, right?

7 A. I remember doing a phone interview with
8 Mr. Cordova in his attorney's office.

9 Q. And he testified about that last week,
10 too, right?

11 A. Yes.

12 Q. So this is two days after his testimony
13 that the SNM was going to move on Rudy Perez, and he
14 talks to you on December 15, 2017, over the phone,
15 right?

16 A. I talked to him over the phone on that
17 date.

18 Q. And he never said, during the course of
19 that phone interview, that his testimony was
20 inaccurate with respect to the SNM moving on Rudy
21 Perez, right?

22 A. I don't recall him telling me anything
23 about inaccurate testimony.

24 Q. Right. He did, however, tell you
25 something about the SNM suspecting that Rudy Perez

1 had talked to the STIU, right?

2 A. I'd need to look at my report.

3 Q. He actually added to his testimony and
4 gave some more information on that.

5 MS. FOX-YOUNG: Your Honor, may I
6 approach?

7 THE COURT: You may.

8 BY MS. FOX-YOUNG:

9 Q. Agent Acee, I'm showing you your report
10 from that day, December 15, 2017. Do you see the
11 area I've marked?

12 A. The highlighted portion, or the blue?

13 Q. The highlighted portion. Does this
14 refresh your memory about that interview?

15 A. Yes.

16 Q. And that was the interview where Billy
17 Cordova didn't tell you, "No, I was wrong. I didn't
18 really mean it when I said the SNM was going to move
19 on Rudy Perez"? He didn't say that. He said
20 something about the SNM suspecting that Rudy Perez
21 had talked to the STIU, didn't he?

22 A. He explained why he thought that, yes.

23 Q. Then last Friday, when Billy Cordova was
24 on the stand, he tried to say something a little bit
25 different, didn't he? Do you remember that?

1 A. I do not.

2 Q. Were you in here for Billy Cordova's
3 testimony?

4 A. I was seated right there, yes.

5 Q. You don't remember him trying to back off
6 those statements?

7 A. I don't.

8 Q. Okay. At any point in the course of your
9 investigation, have you investigated why Rudy Perez
10 was transferred to PNM in Santa Fe?

11 A. I haven't investigated that. I'm aware of
12 why he was transferred.

13 Q. Have you looked into the reasons?

14 A. No.

15 Q. Okay. That hasn't been a part of your
16 investigation?

17 A. If I understand you correctly, you're
18 asking me if I investigated why Rudy was moved from
19 one corrections facility to another?

20 Q. Have you looked into that?

21 A. No.

22 Q. No. Have you looked into why Rudy Perez
23 was not transferred back to the Southern New Mexico
24 Correctional Facility in the fall of 2015 or the
25 spring of 2016?

1 A. No.

2 Q. Okay. Do you know if anybody else has
3 looked into that?

4 A. Not from the standpoint of the FBI
5 investigating a crime, no.

6 Q. Well, let me put this way: Rudy Perez'
7 location has been something of a focus for you in
8 this case, right? I mean, you cared about where
9 Rudy Perez was at PNM, because you made a request
10 that Billy Cordova be placed next to him.

11 A. I've never cared where Rudy Perez is. I
12 just wanted an informant next to him with a
13 recorder. Doesn't matter to me.

14 Q. It's your testimony that you never looked
15 into why Rudy Perez was not transferred to the
16 Southern New Mexico Correctional Facility?

17 MR. CASTELLANO: Objection; asked and
18 answered.

19 THE COURT: Overruled.

20 A. No, I don't care where Rudy Perez is
21 housed. It doesn't matter to me. The objective is
22 to get the recordings.

23 BY MS. FOX-YOUNG:

24 Q. So you don't know why he wasn't moved to
25 the Southern New Mexico Correctional Facility?

1 A. That's a different question. I know why
2 he was moved to PNM.

3 Q. I'm asking if you know why he wasn't moved
4 to the Southern New Mexico Correctional Facility in
5 the fall of 2015?

6 A. No, I have no idea.

7 Q. Since Rudy Perez was charged in this case,
8 have the prosecutors asked you to look into why Rudy
9 Perez was not moved to the Southern New Mexico
10 Correctional Facility in the fall of 2015?

11 A. No. Not in the way you're phrasing it,
12 no.

13 Q. In any way?

14 A. Yes. There has been some conversation as
15 to why he was moved to the Level 6. But I've never
16 been asked, nor have I heard anyone discuss why he
17 wasn't moved to Southern. I don't understand that.

18 Q. I just want to be clear, because I know
19 there has been a lot of movement. After he went to
20 Level 6, since that time, have you ever looked into
21 why he was not moved back to the facility in Las
22 Cruces?

23 A. No.

24 Q. Nobody has asked you to do that?

25 A. No.

1 Q. And you don't know if any other FBI
2 personnel have done that?

3 A. No. Normally, when there is a request
4 from the prosecutors, it comes to me, and I either
5 do it or I assign it to someone else. And I don't
6 recall assigning anything like that to anyone, nor
7 do I recall doing it.

8 Q. Okay. I asked because you're the case
9 agent, and you know what all the FBI personnel are
10 doing in the Main, with regard to this case, right?

11 A. I try to. Not always.

12 MS. FOX-YOUNG: Your Honor, may I approach
13 the witness?

14 THE COURT: You may.

15 MS. FOX-YOUNG: Your Honor, I'm marking
16 what I'm going to call Defendants' Exhibit FW. And
17 I'm going to show it to the witness.

18 MR. CASTELLANO: May I see the exhibit,
19 please?

20 BY MS. FOX-YOUNG:

21 Q. Agent Acee, I'm showing you Defendants'
22 Exhibit FW. I'll represent to you that this is
23 information that was contained in a filing made by
24 the prosecutors in this case. Have you seen this
25 language before?

1 A. I've seen the first half of it. I'm aware
2 of the first half of it. I haven't seen the
3 language. I don't know that I saw the filing, but
4 I'm aware of this information about disciplinary.

5 Q. And you're aware that this information was
6 contained in a filing that the prosecutors made in
7 this case?

8 A. No.

9 MS. FOX-YOUNG: Your Honor, I'd like to
10 move Defendants' Exhibit FW. This is an admission
11 by the United States.

12 THE COURT: Any objection, Mr. Castellano?

13 MR. CASTELLANO: Yes, Your Honor. May we
14 approach?

15 THE COURT: All right.

16 (The following proceedings were held at
17 the bench.)

18 MS. FOX-YOUNG: Your Honor, this is a
19 direct quote, but for the fact that "Defendant" has
20 been replaced with the words "Rudy Perez." This is
21 from the Government's response to our motion to
22 suppress, in which the Government argued that Rudy
23 Perez was not transferred to the Southern New Mexico
24 Correctional Facility for reasons of his own safety.

25 I would cite to the Court the Ganadonegro

1 opinion, in which this Court held that a statement
2 made by the prosecution -- and I can pull the case
3 if the Court would like to see it -- a statement
4 made by the prosecution in closing argument was an
5 admission that could be used in the next trial. And
6 a number of circuits have held that while statements
7 by case agents are not necessarily statements by a
8 party opponent, statements by Government lawyers
9 certainly are.

10 This is a direct quote from their pleading
11 filed in December of last year, I believe, or
12 November.

13 THE COURT: If you want to do that, I
14 think you've got to get the document. And we can
15 redact it and mark it up, and then I can admit it.
16 But I don't think you enter admission by the
17 Government and change the quote, is the right way to
18 do it.

19 MS. FOX-YOUNG: Can we use Exhibit FW as a
20 placeholder? I have the document, and I can redact
21 it at the --

22 THE COURT: I want to see it before you
23 do.

24 MR. CASTELLANO: There is a rule of
25 completeness. And that may then cause us to file

1 their motion as part of pleadings in this court as
2 an admission by party opponent to --

3 THE COURT: I'll take a look at what
4 you've got. I probably will let you admit something
5 if it's an accurate statement. You can put in a
6 document that says that. But I'm not going to let
7 you create a document and say, "Well, this is what
8 they admitted," because that's not quite what
9 they've said.

10 MS. FOX-YOUNG: We can prepare a redacted
11 document for the Court to look at.

12 MR. VILLA: Just for clarification, I
13 don't know how long the response was.

14 MS. FOX-YOUNG: Seven pages.

15 MR. VILLA: You want us to redact
16 everything?

17 THE COURT: I think you probably need to
18 show it to the Government, and let's see how much
19 the Government wants in and how much -- if they
20 don't want anything in, probably I need a page. If
21 they're going to want more, I'm going to have to
22 list it out and see what you can work out.

23 MR. CASTELLANO: Another issue, Your
24 Honor, is one of the bad acts noticed up was a bad
25 act by Rudy Perez, I think in 2000 -- I forget the

1 year, I'll bring it to the bench -- which would be a
2 further reason why he was also disciplined and
3 remained possibly in segregation. So I think it's
4 also going to bring in a bad act with it. I can
5 bring the bad act to the bench if we need to discuss
6 it later.

7 THE COURT: All right.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Ms. Fox-Young.

11 MS. FOX-YOUNG: Thank you, Your Honor.

12 BY MS. FOX-YOUNG:

13 Q. All right. Agent Acee, we've talked about
14 several of the government witnesses in this case,
15 and specifically Mario Rodriguez. Mario Rodriguez
16 told you, in the context of your meeting with Ron
17 Sanchez and other personnel, that becoming a
18 government witness and going into the fed was the
19 best option for him. You talked about that earlier,
20 right?

21 A. For him or for Ronald. I'm not sure which
22 he was referring to.

23 Q. Well, Mario Rodriguez described it as the
24 best option, right?

25 A. In his opinion, yes.

1 Q. And you also heard Billy Cordova testify
2 that it was the best option for him, did you not?

3 A. He did say things like that, yes.

4 Q. And you've also testified just a few
5 minutes ago that, although these witnesses can say
6 that they've dropped out of the gang, and they've
7 abandoned criminal conduct, there is nothing that
8 you or the FBI can do to stop them from continuing
9 to commit criminal conduct, right?

10 A. No.

11 Q. And, in fact, a number of these government
12 witnesses have continued for months and months and
13 months while the Government has been paying them to
14 commit criminal conduct, right?

15 A. No.

16 Q. Shall we reflect on Tim Martinez'
17 continuing drug dealing? Do you remember that
18 testimony?

19 A. Yes.

20 Q. That was after he became a government
21 witness, right?

22 A. I think he's been a drug dealer most of
23 his adult life.

24 Q. That wasn't my question. Was he dealing
25 drugs after he became a government witness, by his

1 own admission?

2 A. Yes.

3 Q. And that was in Sandoval County?

4 A. Yes.

5 Q. And Mr. Billy Cordova has continued to use
6 drugs, as we learned when he was on the stand, since
7 he became a government witness, right?

8 A. He has.

9 Q. And Jerry Montoya had sexual relations
10 with a correctional officer, right?

11 A. Yes.

12 Q. That's also criminal conduct, right? It
13 was his response that it was criminal conduct. I'm
14 not asking you to opine on the law.

15 A. I didn't know that was a question. I'm
16 sorry.

17 Q. Was it criminal conduct when Jerry Montoya
18 had sexual relations with a correctional officer?

19 A. I can't think of what law that might have
20 been a violation of, but he shouldn't have been
21 doing it.

22 Q. You know that it is a violation for a
23 correctional officer to have sex with an inmate,
24 right?

25 A. I'm not that familiar with PREA, but

1 that's the only one I can think of that it might
2 fall under.

3 Q. And it was criminal conduct when Jerry
4 Montoya used that same correctional officer to bring
5 in contraband, including drugs for him, right?

6 A. That is a violation of the law.

7 Q. And, if in fact Mr. Jerry Armenta accessed
8 teen porn, that's a criminal violation, too, right?

9 A. Depends on the age of the child. I mean,
10 18 and 19 is not.

11 Q. Oh, okay. So if some of the individuals
12 pictured in the porn were 17, it would be a criminal
13 violation, correct?

14 MR. CASTELLANO: Your Honor, that
15 misstates the law.

16 THE COURT: Well, if he knows, he can
17 answer. If he doesn't know, he can just say he
18 doesn't know.

19 A. I'm not certain of that.

20 BY MS. FOX-YOUNG:

21 Q. So we just asked a few of the government
22 witnesses. But you're aware that there has been a
23 pattern of ongoing criminal activity by these
24 witnesses working for the Government since the FBI
25 opened them as informants, right?

1 A. I am now, yes.

2 Q. When did you start to become aware?

3 A. Which informant do you want to talk about?

4 Q. Well, when did you become aware of the
5 pattern of criminal activity of these government
6 witnesses?

7 A. These guys have never stopped committing
8 crimes or doing bad things.

9 Q. Okay. All right. Now, some of the
10 government witnesses only have a short time
11 remaining on their state sentences, right?

12 A. Yes. And some have completed their state
13 sentences.

14 Q. And we heard about that from Jerry
15 Montoya, right?

16 A. Yes.

17 Q. And we heard Jerry Montoya talking to
18 family members about the prospect that he might just
19 get time served in this case, right? Do you
20 remember Jerry Montoya's testimony and the phone
21 calls in which he told his family the Government
22 was -- that the prosecutors were going to come in
23 and ask for time served?

24 A. No, I don't remember it like that. He
25 talked about that, but I don't know that that's what

1 he said.

2 Q. Do you remember that that's what he told
3 his family on the phone?

4 A. Like I said, he said something about that,
5 but I don't know that he said the prosecutors
6 represented that.

7 Q. He said the Government was going to come
8 and ask for time served, didn't he?

9 A. Again, he talked about that. I just don't
10 know that that's exactly what he said.

11 Q. And he's not the only one for whom you
12 heard these calls. These men, one after another,
13 told their families about the promises that you and
14 the prosecutors have made to them, right?

15 A. No, that's not true.

16 Q. You didn't hear other calls like that?

17 A. I heard other telephone calls where these
18 guys represented something as fact that was not.

19 Q. Well, that's my question, if you remember
20 hearing those calls where they told their friends
21 and family about these promises?

22 A. They represented to their family that
23 certain things were going to happen that weren't
24 discussed by us.

25 Q. I'm just asking if you remember hearing

1 those calls in this court, in this trial.

2 A. You're asking me, and you'll ask two
3 questions in one. So part of that is "Yes," and
4 part of it is "No." I remember that there were
5 phone calls. You also said that the Government
6 promised things. And we didn't. And I didn't hear
7 them say that the Government promised anything.

8 Q. You didn't hear Jerry Montoya say that the
9 Government was going to come in and ask for time
10 served, and so were his lawyers?

11 A. He said something along those lines.

12 Q. Okay. And you didn't hear Lupe Urquizo
13 say that the more people he brought to the table,
14 the more time would be taken off his sentence?

15 A. I don't remember that.

16 Q. In any event, you would agree with me that
17 the government witnesses who got on board and began
18 cooperating early on sort of had the ability to
19 write their own tickets in this case, right?

20 A. Absolutely not.

21 Q. Nobody could write their own ticket?

22 A. Defendants don't write their own ticket,
23 no.

24 Q. So defendants in this case didn't have the
25 option to decide whether they want to be charged

1 federally or not?

2 A. I can think of two that did.

3 Q. Oh, you can. Who are those?

4 A. Frederico Munoz and Lupe Urquizo.

5 Q. Okay. I thought you just said that they
6 didn't get to write their own ticket?

7 A. They don't. What does that mean, to write
8 your own ticket?

9 Q. All right. Well, do they get to write
10 their own indictments?

11 A. No.

12 Q. Do they get to decide what charges were
13 going to be brought against them?

14 A. Not exclusively, no. They -- those two
15 specifically that I mentioned helped me determine
16 what overt acts to charge them with, which ones they
17 would admit to.

18 Q. Do you remember in the context of that
19 meeting that you had, the one that was recorded with
20 Mario Rodriguez and Ron Sanchez, discussing this
21 very issue?

22 A. Yes.

23 Q. And do you remember that you actually
24 said, "I think the easiest charge would be a
25 racketeering conspiracy, where it was -- there was

1 some agreement with the Government that it would be
2 capped at whatever time you owed the state."

3 Do you remember saying that?

4 A. Yes.

5 Q. And then do you remember saying, "So it's
6 not like you -- I'll tell you who did that. Playboy
7 did it. He can tell you all about it."

8 Do you remember that?

9 A. Yes. Playboy is Frederico Munoz.

10 Q. Playboy is Frederico Munoz. And then do
11 you remember Mario Rodriguez saying, "Right, he
12 wrote his own, his own" --

13 Do you remember that?

14 A. Yes.

15 Q. And then your immediate response, "He
16 wrote it. Yeah, pretty much."

17 Do you remember that?

18 A. I do.

19 Q. And then do you remember going on to
20 discuss Lupe Urquizo, and that Mario Rodriguez
21 agreeing that Lupe Urquizo had implicated himself
22 just so he could do his time in the feds? Do you
23 remember that?

24 A. Yes.

25 Q. So when you talked about Playboy,

1 Frederico Munoz, "writing his own -- yeah, pretty
2 much writing it," what was he writing for himself,
3 if it wasn't the charges?

4 A. Well, to be clear, Frederico Munoz doesn't
5 write any legal documents. When I'm sitting talking
6 with SNM Gang members, versus testifying in court,
7 my language is sometimes very different.

8 So what I was telling Ronald is that
9 Frederico wrote his own indictment, meaning he sat
10 down with the FBI and he confessed all of his
11 crimes, to be used as overt acts.

12 So my representation to gang members was
13 that this guy rose his hand. And Frederico did. I
14 mean, he wanted to be charged in the feds. He
15 wanted out of the state. That is true. But he
16 didn't write his own indictment.

17 Q. Okay. But he got to make the decision
18 about how he was going to be charged in the feds,
19 right?

20 A. Did you say he got to?

21 Q. Yes.

22 A. He wanted to be charged in the feds, and
23 he participated with his attorney in what overt acts
24 we used.

25 Q. And that's what you meant when you said,

1 "He wrote it, yeah, pretty much," right?

2 A. Yes.

3 Q. Okay. And with respect to Lupe Urquizo,
4 you and Mario Rodriguez agreed he pretty much did
5 the same, because he wanted to serve time in the
6 feds, right?

7 A. Yes.

8 Q. And the reason that he wanted to serve
9 time in the feds was the same reason Mario Rodriguez
10 wanted to, right? He wanted to be in Tucson or
11 Florida, he wanted contact visits, and he wanted to
12 do easy time, right?

13 A. Well, there's a lot of questions there. I
14 don't know -- their interpretation is it's easy
15 time. I don't know if they get contact visits. And
16 the defendants certainly don't pick what prison they
17 go to.

18 Q. Do you remember during Billy Cordova's
19 testimony, he talked about conversations with you
20 about where he would make the decision whether he
21 was going to be in the state or the fed? Do you
22 remember that?

23 A. No.

24 Q. You don't remember him saying that, yes,
25 he was going to meet with you, and it would be

1 his -- he had to decide whether he wanted to go to
2 the state or the fed?

3 A. You're saying he testified to that?

4 Q. Do you remember his testimony?

5 A. I don't remember that discussed.

6 Q. Well, he did. He testified that --

7 MR. CASTELLANO: Your Honor, she's
8 testifying.

9 THE COURT: Ms. Fox-Young, hold on.

10 MS. FOX-YOUNG: Your Honor -- oh, I'm
11 sorry.

12 THE COURT: You can't do that. You're not
13 testifying.

14 MS. FOX-YOUNG: I understand. I was just
15 going to say, I'll move on, Judge.

16 THE COURT: All right.

17 BY MS. FOX-YOUNG:

18 Q. Agent Acee, do you recall questioning
19 about whether Mr. Cordova talked on the phone about
20 meeting with you and telling you whether he was
21 going to be going to the state or the fed?

22 A. I'm confused by your question. Could you
23 say the first part again?

24 Q. Sure. You recall Billy Cordova testifying
25 last week?

1 A. Yes.

2 Q. And you recall him being asked about
3 conversations he had on the phone about his charges?

4 A. Yes.

5 Q. And he was also asked, was he not, about
6 conversations that he had about meeting with you
7 about those charges, right?

8 A. Yes. Attorneys asked him questions about
9 that.

10 Q. And he was also asked whether ultimately
11 it was going to be his decision whether he would go
12 to the state or the fed, and he was going to tell
13 you that, right?

14 A. I believe part of that is true, but I
15 don't remember that line of questioning.

16 Q. Okay. With respect to all these
17 government witnesses, a lot of promises and benefits
18 have been afforded; would you agree with me?

19 A. No.

20 Q. Well, let's go through them. Tens of
21 thousands of dollars have been paid to these
22 government witnesses; isn't that right? Eric Duran
23 alone received over \$40,000, right?

24 A. 46, yes.

25 Q. Do you know the sum total of monies that

1 have been paid collectively to all the government
2 witnesses in this case?

3 A. I could estimate. I don't know the exact
4 amount.

5 Q. Is it accurate to say that it's tens of
6 thousands of dollars?

7 A. It's more accurate to say it's around,
8 probably, 70,000, 75,000.

9 Q. Do you know if the government witnesses
10 have been issued 1099s in this case?

11 A. We don't do that.

12 Q. You don't issue 1099s?

13 A. The FBI does not.

14 Q. You don't know if they're going to pay
15 taxes on that money?

16 A. They're advised that they're responsible
17 to, but the FBI doesn't give informants 1099s.

18 Q. You've testified some about lump sum
19 benefits, right?

20 A. I've answered some questions about it.
21 The Department of Corrections lump sum? Because the
22 FBI has a lump sum, and they mean different things.

23 Q. Well, Agent Acee, I just want to ask you
24 about lump sum benefits in this case.

25 A. I just want to answer honestly. I need to

1 know which one we're talking about.

2 Q. So I don't know whether -- why don't you
3 tell me, would you characterize the lump sum
4 benefits that have already been given in this case
5 as Department of Corrections lump sum benefits?

6 A. During the course of this investigation, I
7 learned that the Department of Corrections has a
8 lump sum award. I understand it to be for
9 lifesaving. And that Eric Duran received two of
10 those. The Department of Corrections felt that he
11 earned them for saving the lives of Gregg Marcantel
12 and Dwayne Santistevan.

13 Q. Agent Acee, would you just answer my
14 question? Are they Department of Corrections lump
15 sum or FBI lump sum benefits?

16 A. What I just explained was the Department
17 of Corrections lump sum. The FBI has a lump sum,
18 which means something entirely different.

19 Q. Okay. Have you afforded any FBI lump sum
20 benefits in this case, or has the FBI afforded any
21 of those benefits in this case?

22 A. Yes. But not to any of the individuals
23 we've talked about.

24 Q. Who has received an FBI lump sum benefit
25 in this case?

1 A. Off the top of my head, I can think of
2 one, but I'm hesitant to give the name. I'd need to
3 consult with the U.S. Attorney's Office before I do
4 that, because the Department of Justice has some
5 rules on that.

6 MR. CASTELLANO: I would object, Your
7 Honor. If it's a dollar amount, that's one thing.
8 But to protect the person's identity, I would ask
9 that he not have to answer that.

10 MS. FOX-YOUNG: Your Honor, I think if the
11 Court wants to consider it at the bench --

12 THE COURT: Let me hear what's going on.
13 I'm not quite sure.

14 MS. FOX-YOUNG: We can do a voir dire at
15 the bench.

16 THE COURT: Well, just come up and explain
17 to me what the issue is first.

18 (The following proceedings were held at
19 the bench.)

20 THE COURT: What were you expecting the
21 answer to be?

22 MS. FOX-YOUNG: I just want to go through
23 all the benefits that have been afforded the
24 witness.

25 THE COURT: No, you asked the question

1 here: Who has received an FBI lump sum in this
2 case?

3 MS. FOX-YOUNG: I didn't know there had
4 been any. And the witness brought it up. I want to
5 know who received one. I think if it's one of the
6 witnesses testifying in this case --

7 THE COURT: Mr. Acee, come here.

8 MR. BECK: Your Honor --

9 MR. CASTELLANO: The real-time is playing
10 on the tables.

11 MR. BECK: -- the real-time is playing on
12 all the tables. We're worried about if a name is
13 said at this point. That's the concern.

14 MR. VILLA: Only for the jury.

15 MS. FOX-YOUNG: Maybe we shouldn't do it
16 in front of the jury. I don't want the jury to see.
17 We're worried about the jury seeing the defendants'
18 real-time. I don't think it's appropriate.

19 THE COURT: Turn off the mute button.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: All right. Ladies and
23 gentlemen, let me meet with counsel and the parties
24 here in a minute. All right. We'll be in recess
25 for a few minutes.

1 All rise.

2 (The jury left the courtroom.)

3 THE COURT: All right. Everyone be
4 seated. How does this solve the other problem? It
5 doesn't. We solved one problem. How do we solve
6 the other?

7 MR. VILLA: We can close the real-time
8 now.

9 THE COURT: Are you able to shut down
10 real-time without a great deal of effort? Are you
11 able to?

12 MS. JACKS: We closed ours, but now it's
13 broken.

14 THE COURT: All right. Well, put a paper
15 in front of it.

16 MS. JACKS: We all closed them. That's
17 what we were told to do.

18 THE COURT: Are y'all satisfied now?

19 THE COURT REPORTER: I can't hear you.

20 THE COURT: Well, I'm going to mute the
21 button up here at the front.

22 (The following proceedings were held at
23 the bench.)

24 MR. CASTELLANO: We also have a reporter
25 in here.

1 I think what he's going to tell the Court
2 is that he's not certain he can answer that question
3 as to this lump sum afforded without breaking FBI
4 rules.

5 THE COURT: Well, advise me whether he's
6 breaking the FBI rules.

7 MR. CASTELLANO: He knows. We don't know.

8 THE COURT: All right. Here's the
9 question that's on the table, Mr. Acee: Who has
10 received an FBI lump sum benefit in this case? So
11 you must have said something earlier that indicated
12 the question before is "Yes." But not any
13 individual that we talked about. So let me ask
14 this -- and maybe we can cut through this.

15 Have you -- has there been anybody that's
16 been a witness in this case, anybody that's been an
17 accomplice in this case, that received a lump sum
18 benefit?

19 THE WITNESS: I can think of one. That's
20 the one witness that is on the witness list that
21 wasn't called.

22 THE COURT: Wasn't called? The
23 defendants' list or the Government's?

24 THE WITNESS: The Government's.

25 THE COURT: And you didn't call them?

1 THE WITNESS: Didn't call them.

2 THE COURT: With that, do you need
3 anything further?

4 MS. FOX-YOUNG: I think, if he implicates
5 the defendants in this room, I'm comfortable with
6 the Court hearing it in camera.

7 THE COURT: I guess I'm wondering what
8 benefit is a name? Has that person been, to your
9 knowledge, even identified in this courtroom by
10 anybody's testimony?

11 THE WITNESS: No.

12 THE COURT: Do you recall the name coming
13 up or anything in front of the jury?

14 THE WITNESS: No.

15 MS. FOX-YOUNG: Well, Your Honor, I could
16 proceed with questioning without the name, and then
17 I think --

18 THE COURT: Because it sounds like --

19 MS. FOX-YOUNG: We're entitled to know if
20 he's on the Government's witness list.

21 THE COURT: I think he said he is.

22 MS. FOX-YOUNG: I think we're entitled to
23 know the answer to the question as to what the
24 federal lump sum --

25 THE COURT: The answer is "Yes."

1 MS. FOX-YOUNG: -- and who received it.

2 THE COURT: You're asking a bunch of new
3 questions now.

4 MS. FOX-YOUNG: No, the question on the
5 table --

6 THE COURT: Well, the question was who has
7 received. So now you're asking for the identity of
8 this one witness.

9 MS. FOX-YOUNG: Who has received an FBI
10 lump sum benefit in this case. That's the question.
11 Who received one.

12 THE WITNESS: I can't remember all the
13 names. I think there have been three. And I was
14 trying to define what a lump sum is.

15 THE COURT: Let's do this: You go back
16 and talk to your FBI people, see if you can disclose
17 these three names, and let's deal with this down the
18 road.

19 MR. BECK: Sounds like one way to get
20 through it, just have people involved in the
21 investigation, the SNM, receive lump sum.

22 THE COURT: How do you know? And then we
23 move on. I don't think the names are important.
24 And if you say they're connected with this FBI
25 investigation --

1 MS. FOX-YOUNG: Well, Your Honor --

2 THE COURT: Well, that's not their
3 question. She wants the answer. So Mr. Acee can
4 find out the answer. And if he can give it, he'll
5 give it, and we'll move on. If he can't give it,
6 then I'll figure out what to do.

7 All right. Let's tell the jury we're
8 going to take our afternoon break at this time, and
9 we'll be in recess until 4:00.

10 (The following proceedings were held in
11 open court.)

12 (The Court stood in recess.)

13 THE COURT: All right. Let's go on the
14 record. I'd ask the Government's attorneys to be
15 involved with these discussions that Mr. Acee is
16 going to have. Don't just leave Mr. Acee out there,
17 trying to figure out a legal issue. So I need the
18 Government to get involved in that discussion and
19 see if this can be released; and if not, tell me why
20 not, and try to be lawyers in this thing, and argue
21 it, either agree that it can be disclosed or not.
22 But don't just leave Mr. Acee out there, having to
23 deal with legal counsel and trying to interpret it
24 here. So I'll ask the Government to get involved in
25 those discussions.

1 MS. FOX-YOUNG: Your Honor, I've talked
2 with Mr. Beck, and I think I can move on. I think
3 there was some confusion as to what the benefit was,
4 and who the three individuals are who we're talking
5 about. But I think I understand now from Mr. Beck,
6 and I don't intend to elicit any more on this line
7 of questions.

8 THE COURT: Okay. So Mr. Acee doesn't
9 need to do anything?

10 MS. FOX-YOUNG: I think we can just leave
11 it, Your Honor. I'll move on to the next question.

12 THE COURT: All right.

13 Let me -- Ms. Duncan, on your transcript
14 that you sent to Ms. Standridge, I don't think a
15 limiting instruction on that testimony is necessary.
16 Because Mr. Cordova's testimony that Baby G and Mr.
17 Baca are close isn't hearsay, and doesn't suggest
18 that the Perez' statements should be used against
19 Baca. So I'm not going to do anything further on
20 that one.

21 I'll still wait for yours, Ms. Jacks,
22 because yours is the one that I think concerned me a
23 little bit more.

24 MS. JACKS: I'm sorry. I didn't have time
25 at lunch because I was meeting with witnesses, but

1 I'll get it tonight.

2 THE COURT: Just get it to me. But I'm
3 not going to add your limiting instruction on that.

4 Let me see if I can get -- before the jury
5 comes in -- let me repeat something, so what I'm
6 then about to say makes sense. Establishing that
7 Mr. Baca violated VICAR by conspiring to commit
8 assault resulting in serious bodily injury, in
9 violation of New Mexico law, requires, as I said
10 before we took the break, the United States to
11 prove, one -- and Mr. Baca's conduct constitutes
12 generic conspiracy to commit assault resulting in
13 serious bodily injury; and two, that Mr. Baca's
14 conduct also violated New Mexico law. That
15 structure, identifying conduct that falls within a
16 generic category, and also violates a state or
17 nonracketeering federal law, features prominently in
18 federal racketeering statutes.

19 So when I have a chance, I'll give you the
20 cases. But that's the setup for what I'm about to
21 give you. So next time you hear from me, I'm just
22 going to give you cases instead of talking. All
23 right.

24 All rise.

25 (The jury entered the courtroom.)

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1 THE COURT: All right. Everyone be
2 seated.

3 All right. Mr. Acee, I'll remind you that
4 you're still under oath. Ms. Fox-Young, if you wish
5 to continue your direct examination of Mr. Acee, you
6 may do so at this time.

7 MS. FOX-YOUNG: Thank you, Your Honor.

8 BY MS. FOX-YOUNG:

9 Q. Agent Acee, before the break we talked a
10 little bit about benefits that some of the
11 government witnesses in this case have received;
12 isn't that right?

13 A. Yes.

14 Q. And you agree with me that a number of
15 witnesses received a huge benefit, in that they were
16 never prosecuted for murders in which they were
17 implicated, right?

18 A. I can think of one person, yes.

19 Q. You can think of Billy Cordova right off,
20 right?

21 A. No.

22 Q. You don't recall that Billy Cordova was
23 not prosecuted in the RICO case for multiple
24 murders, assaults, and other criminal conduct that
25 you had been compiling?

1 A. The evidence didn't suggest he did it, so
2 I can't charge him.

3 Q. I thought it was clear from your testimony
4 earlier in this case and earlier today that you
5 think Billy Cordova absolutely was implicated in the
6 murder of Sammy Chavez, right?

7 A. I agreed with you that informants told me
8 that Billy told them. That doesn't constitute
9 evidence, probable cause for me to charge him on
10 that alone.

11 Q. Based on Billy Cordova's statements to you
12 and his testimony to this jury, and if this is all
13 he did, that he gave instructions as to how to
14 commit the murder, you think he's implicated on that
15 basis, don't you?

16 A. I think I can use those as overt acts,
17 yes.

18 Q. And you were compiling those overt acts?

19 A. Yes. That particular overt act I didn't
20 know about until I interviewed him, though.

21 Q. Okay. But you elected not to charge him?
22 You elected not to pursue him as a defendant in that
23 RICO case?

24 A. No, I didn't. In fact, I pushed to charge
25 him.

1 Q. Wasn't it your prior testimony that you
2 instructed Agent Neale to stop compiling overt acts
3 on Billy Cordova?

4 A. I did. And then we resumed. I said that
5 in front of Billy Cordova, but we resumed.

6 Q. But ultimately, Billy Cordova was not
7 charged, right?

8 A. He was not.

9 Q. And isn't that something of a significant
10 benefit?

11 A. It could be.

12 Q. Okay. In addition, the jury has heard,
13 and you have heard, and you have witnessed numerous
14 other benefits that these witnesses received: The
15 ability to have sex and other contact visits with
16 their families, right?

17 A. They -- a few of them were able to do
18 that, four of them.

19 Q. And parties where they could all get
20 together around the holidays, right?

21 A. The pizza party, yes.

22 Q. And in Mario Rodriguez' words, the
23 opportunity to serve easy time in the fed, right?

24 A. Mario has never been in the feds.

25 Q. But those are his words?

1 A. Those were his words.

2 Q. And Frederico Munoz and Lupe Urquizo got
3 to make that choice, right?

4 A. They made the choice to get charged in the
5 feds, yes.

6 Q. And Billy Cordova had the same choice,
7 right, but ultimately was not charged at all?

8 A. Yes.

9 Q. All right. Agent Acee, you're aware that
10 a number of these government witnesses were housed
11 together during the course of the investigation of
12 this case, right?

13 A. Yes.

14 Q. And you, in fact, yourself sometimes
15 facilitated having them confer with one another,
16 right? I'll give you an example. You remember
17 testifying that in August 2017, Lupe Urquizo and
18 David Calbert had the opportunity to confer together
19 about their testimony for the Government?

20 A. Yes, at the FBI office.

21 Q. And then after that time, David Calbert
22 magically started telling the same story that --

23 A. My last answer is not correct. Because
24 you said to get their stories straight, or to
25 confer. They conferred, but it wasn't about their

1 stories.

2 Q. Okay. You agree that they conferred?

3 A. I agree that they met in front of me at
4 the FBI office, and they met for 10 minutes with
5 their attorneys.

6 Q. And you don't know what was said when they
7 met for 10 minutes behind closed doors, right?

8 A. No.

9 Q. And then magically, after that time, David
10 Calbert started telling the same story that Lupe
11 Urquizo was telling, right?

12 A. Their stories are for the most part
13 similar.

14 Q. And after that time, Lupe Urquizo was
15 tasked with bringing Mario Rodriguez on board, was
16 he not?

17 A. No. No, I don't agree with that.

18 Q. Do you remember Lupe Urquizo's testimony
19 and the call that he made -- we talked about getting
20 five years off if he could get that guy, Blue, to
21 come on board?

22 A. Yeah, but to say he was tasked, he wasn't
23 by me, because Blue was represented.

24 Q. Okay.

25 A. I'm not able to task an informant and send

1 an informant after someone who has an attorney.

2 Q. So these government witnesses, where they
3 were housed together, they had months and months to
4 study the electronic materials, the discovery in
5 this case, right?

6 A. Not all the witnesses, cooperating
7 defendants, had tablets.

8 Q. Those who were charged had tablets, right?

9 A. For a period of time. And then they were
10 taken.

11 Q. And that gave them time to figure out just
12 exactly what they needed to say that would qualify
13 as substantial assistance to the Government, right?

14 A. No.

15 Q. Because they all wanted the Government to
16 reach that same magic conclusion for them that they
17 had provided substantial assistance?

18 A. I don't know what they want. But they
19 gave their statements to me, many of them before
20 they had tablets.

21 Q. Okay. Well, you gave some witnesses a
22 roadmap as to where to look to find the information
23 for their testimony, didn't you?

24 A. No.

25 Q. Did you ever tell them that all the truth

1 is in the tablet?

2 A. That's the truth about the SNM, guys dry
3 snitching and turning their backs on each other.
4 I've made that kind of a statement before.

5 Q. Did you make the statement to witnesses in
6 this case that "All the truth is in the tablet"?

7 A. I think I just answered that. What I'm
8 telling them -- for example, Angel Munoz ratted. A
9 lot of these guys didn't know that. I said, "Look
10 at the tablets. I've turned everything over."

11 Let me be clear, though. I've never
12 looked through the tablet. I just know --

13 Q. My question is just if you made that
14 statement to the witnesses in this case?

15 A. And I'm saying I may have.

16 Q. Well, would you like me to show you a
17 transcript to refresh your memory?

18 A. Sure.

19 Q. Agent Acee, do you see here on this
20 transcript where your response to Mario Rodriguez,
21 with Ron Sanchez in the room, was "All the truth is
22 in the tablet"?

23 A. Yes.

24 Q. The truth is that a whole lot of what the
25 witnesses in this case have said isn't true at all,

1 is it?

2 A. No, I don't agree.

3 Q. That's not the truth?

4 A. No.

5 Q. In fact, in your own words, half the
6 people who talk to you are bullshitting. Haven't
7 you said that?

8 A. I don't know that that's fair.

9 Q. Well, are those your words?

10 A. Yes.

11 Q. So in speaking about the witnesses in this
12 case, you did say, "We know half the people that
13 talk to us are bullshitting," right?

14 A. I'm saying, in my line of work, half the
15 people --

16 Q. I'm just asking if you made that
17 statement.

18 A. I did. And I'm explaining what I meant by
19 it. I don't have to explain, though.

20 Q. And you went on to say, "But we have to
21 write it down anyway," didn't you?

22 A. When I'm taking someone's statement, I
23 write down what they say.

24 Q. Are those your words: "Half the people
25 that talk to us are bullshitting, but we've got to

1 write it down anyway"?

2 A. They may be.

3 Q. Would you like me to show you the
4 transcript?

5 A. Please.

6 Q. Agent Acee, do you see here where those
7 statements are?

8 A. Yes.

9 MS. FOX-YOUNG: No further questions, Your
10 Honor.

11 THE COURT: Thank you, Ms. Fox-Young.

12 Other defendants -- or is this where we're
13 going to take a break and call some other witnesses?

14 MS. JACKS: This is where we requested to
15 call other witnesses.

16 THE COURT: The defendants have some
17 witnesses they need to get on and off, so we're
18 going to ask Mr. Acee to step down.

19 Thank you for your testimony, Mr. Acee.

20 And we'll resume the direct examination of
21 Mr. Acee, probably not today, but later this week.

22 So, Ms. Jacks, you have a witness that you
23 need to call out of order here?

24 MS. JACKS: I have two, so I'm happy to
25 get started. We would call James Brewster. And

1 I'll get him. He's sitting right outside.

2 THE COURT: Mr. Brewster, if you'll come
3 up and stand next to the witness box on my right,
4 your left, before you're seated, my courtroom
5 deputy, Ms. Standridge, will swear you in.

6 JAMES BREWSTER,
7 after having been first duly sworn under oath,
8 was questioned, and testified as follows:

9 THE CLERK: Please be seated. State and
10 spell your name for the record.

11 THE WITNESS: My name is James Brewster,
12 J-A-M-E-S; Brewster, B-R-E-W-S-T-E-R.

13 THE COURT: Mr. Brewster.
14 Ms. Jacks?

15 MS. JACKS: Thank you.

16 DIRECT EXAMINATION

17 BY MS. JACKS:

18 Q. Good afternoon, Mr. Brewster.

19 A. Good afternoon.

20 Q. Thank you for being here. Can you tell
21 the jury how you're employed?

22 A. I work for the New Mexico Corrections
23 Department.

24 Q. And what is your position there?

25 A. I'm the General Counsel for the agency,

1 and I also act as the Records Custodian for purposes
2 of the Public Records Act.

3 Q. Okay. Can you tell us what the Public
4 Records Act is, and is it called IPRA for short?

5 A. It's called the Inspection of Public
6 Records Act, which is known as IPRA, and it's a
7 state law that requires agencies to provide public
8 documents within certain timeframes.

9 Q. And they're provided -- what happens is
10 the party makes a formal request to your office --

11 A. That's correct.

12 Q. -- in writing, specifying the types of
13 records that they're looking for?

14 A. That's correct.

15 Q. And then do you have people that work with
16 you that you cause to search the records of the
17 Department of Corrections?

18 A. Yes.

19 Q. And they -- what do they do?

20 A. They check with people that would know
21 where the records are. They call various
22 institutions. We talk to various people at all the
23 different institutions to gather responsive public
24 records.

25 Q. And then once you gather the records that

1 are responsive, do you provide them to the party or
2 person who is requesting then?

3 A. I do, after I review them.

4 Q. To make sure that they're accurate and
5 responsive to the request?

6 A. And public. And not somehow private or
7 confidential.

8 Q. Now, with respect to the New Mexico
9 Department of Corrections, are you familiar with the
10 various policies about what sorts of records are
11 supposed to be kept on a daily basis?

12 A. I'm generally familiar, yes.

13 Q. And I guess I want to talk to you about
14 two types of records. The first is records
15 regarding the transportation of inmates between New
16 Mexico penal institutions.

17 Are there requirements that the
18 individuals that drive those transportation vehicles
19 keep certain records during the course of that
20 transport?

21 A. Yes.

22 Q. And can you tell us the type of records
23 that they're required to keep?

24 A. Generally speaking, they're required to
25 keep a record of when an inmate goes from one

1 facility to another facility. Both the sending and
2 receiving facility should keep some sort of an
3 inventory or other related record that shows,
4 generally, what kind of property they had.

5 Q. So that's a particular record called a
6 Property Inventory form?

7 A. I believe it is, yes.

8 Q. And there is a requirement that prior to
9 an inmate being -- let me go back: There is a
10 requirement that when an inmate is about to be
11 transferred, that his property is inventoried at the
12 institution where he starts out?

13 A. That's correct.

14 Q. And there is a particular form for that;
15 Is that right?

16 A. I believe there is, yes.

17 Q. And then is that form supposed to be kept
18 at the sending institution?

19 MR. BECK: Objection, Your Honor, leading.

20 THE COURT: Overruled.

21 BY MS. JACKS:

22 Q. Where is that form supposed to be kept?

23 A. I believe it's supposed to be kept at the
24 receiving institution.

25 Q. Is there a requirement for a form to be

1 completed and kept at the sending institution, as
2 well?

3 A. I believe there is, yes.

4 Q. Okay. Do you want to -- we've discussed
5 the New Mexico Department of Corrections inmate
6 property and laundry policy CD-150200; have we not?

7 A. Yes.

8 Q. And do you think if you reviewed that,
9 that would allow you to be more certain about what
10 the requirements were?

11 A. Yes.

12 MS. JACKS: Your Honor, I have a copy of
13 that policy that's actually dated September 4 of
14 2013. May that be marked as Defense W7?

15 THE COURT: All right.

16 MS. JACKS: May I approach?

17 THE COURT: You may.

18 BY MS. JACKS:

19 Q. I'll just ask you, is there a section in
20 that policy that deals with the property inventory
21 forms that are required to be kept -- completed and
22 kept at the sending and receiving institution?

23 A. There is. I'm not sure exactly where it
24 is because it's a lengthy policy, but it's in here.
25 I've seen it.

1 MS. JACKS: Okay, may I approach again,
2 Your Honor?

3 THE COURT: You may.

4 BY MS. JACKS:

5 Q. I should have tabbed it. Specifically,
6 Mr. Brewster, I'm going to direct you and counsel to
7 Section L -- it starts on page 8 -- regarding
8 property inventory for inmate transfers. And I'm
9 just going to give you a chance to review that.

10 A. Thank you.

11 Q. Have you had a chance?

12 A. Yes.

13 Q. So I'm just going to ask you a few
14 questions about that particular section. So does
15 that section require the inspection and inventory of
16 inmate property whenever an inmate enters,
17 transfers, or is released from a New Mexico
18 Correctional Institution?

19 A. That's correct.

20 Q. And with respect to a transfer between
21 institutions, is a property inventory form supposed
22 to be completed prior to the inmate's transfer?

23 A. It's called a Property Inventory List, but
24 yes.

25 Q. Okay, thank you. And is that property

1 inventory list supposed to be held at the sending
2 institution?

3 A. It is.

4 Q. And then after the inmate is transferred
5 to a new institution, is there also a requirement
6 that a new property -- property inventory list be
7 completed at the receiving institution?

8 A. That's correct, yes.

9 Q. And where is that supposed to be held?

10 A. They should keep it at the receiving
11 institution.

12 Q. And is there -- I think in the back of
13 that policy a -- just a sample form of this property
14 inventory list.

15 A. I'm not seeing it. I'm pretty sure it's
16 in here, but give me a moment. I'm just not seeing
17 it.

18 Q. That's okay. It's hidden. So Mr.
19 Brewster, showing you that page, I think it's
20 stamped on the bottom, 53415. Is this a property --
21 a sample property inventory list?

22 A. Yes.

23 Q. And is that the type of list that's
24 supposed to be completed both before and after the
25 transfer of a Department of Corrections inmate?

1 A. Yes.

2 Q. And is it supposed to be completed at the
3 time that the inmate is transferred?

4 A. As soon as it can be, yes.

5 Q. And is that completed during the regular
6 course of activity within the New Mexico
7 Correctional Department?

8 A. I'm not sure I understand your question.

9 Q. Well, is that something that happens every
10 day when inmates are transferred, pursuant to the
11 policies of the Department of Corrections?

12 A. Yes.

13 Q. And is it a regular practice of the
14 Department?

15 A. It is a regular practice.

16 MS. JACKS: I'd ask that that property
17 inventory list -- just the sample -- be marked as
18 W7 -- I'm sorry, W8.

19 Excuse me, Your Honor, can we mark that
20 property list as W8, the sample list?

21 THE COURT: You may.

22 MS. JACKS: Thank you. And I'd ask that
23 it be admitted at this time.

24 THE COURT: W8. Any objection, Mr. Beck?

25 MR. BECK: No objection.

1 THE COURT: All right. Defendants'
2 Exhibit W8 will be admitted into evidence. Assuming
3 there is no objection from any other defendants?
4 Not hearing any, then I'll admit it.

5 MS. JACKS: Could we publish this for the
6 jury?

7 THE COURT: You may.

8 (Defendants' Exhibit W8 admitted.)

9 BY MS. JACKS:

10 Q. Okay. And showing you what's been marked
11 W8, is this the property list that's supposed to be
12 completed for the transfer of inmates?

13 A. Yes, it is.

14 Q. All right. And I -- I'm assuming over
15 time this form has changed?

16 A. It has changed over time, yes.

17 Q. But basically, the idea is to take a
18 complete inventory of all the property that the
19 inmate is moving from institution one to institution
20 two?

21 A. That's what the policy says, yes.

22 Q. I want to ask you some questions -- not
23 about property inventory lists, but about the
24 transport of inmates between institutions. Are
25 there -- well, first of all, does the New Mexico

1 Department of Corrections transfer inmates between
2 institutions?

3 A. It does.

4 Q. And do they do that using their own
5 correctional officers and their own transport
6 vehicles?

7 A. They do.

8 Q. And are the correctional officers required
9 to keep some sort of logs and records of the inmates
10 they transfer and the times and places they drive
11 to?

12 A. They are.

13 Q. And is that also part of the policies and
14 procedures of the New Mexico Department of
15 Corrections?

16 A. It is.

17 Q. And are those records maintained in the
18 ordinary course of business at the Department of
19 Corrections?

20 A. Yes.

21 Q. As part of the employee's duties?

22 A. That's correct.

23 Q. Okay. Now, specifically, I want to ask
24 you about an Inspection of Public Records Act
25 request that was submitted to your department on or

1 about April 13 of 2017 in connection with this case.

2 First of all, on that date, were you
3 requested to search your records and provide any and
4 all documentation regarding the transportation of
5 inmates Lupe Urquizo, Mauricio Varela, and Reynaldo
6 Enriquez from the Penitentiary of New Mexico to
7 Southern New Mexico Correctional Facility on or
8 about March 6, 2014?

9 A. Yes. I received a public records request
10 from your office, I believe it was sometime in
11 April.

12 Q. And after some months of work and
13 gathering those records, did you actually gather and
14 provide those records to me by way of email?

15 A. My office did, yes.

16 Q. And I want to show you what's been marked
17 as Defendants' Exhibit T. And I'm going to ask you
18 if that's a true and correct copy of the records
19 that you provided, pursuant to that Inspection of
20 Public Records Act request?

21 Have you had a chance to look at it, Mr.
22 Brewster?

23 A. I looked at T1. Do I need to look at the
24 rest of them?

25 Q. Just T. I think the rest are photographs,

1 so I'm just asking you to look at T.

2 A. Yes, I did look at T, and I did produce
3 those documents to you. I don't think that's the
4 only documents I produced to you, but I did produce
5 those.

6 Q. Okay. And those were documents produced
7 with respect to the request about the transportation
8 records created by officers who actually drove the
9 transport on March 6, 2014?

10 A. That's correct.

11 Q. And is that a true and correct copy?

12 A. As best I can tell, yes.

13 MS. JACKS: Your Honor, at this time we'd
14 ask that Defendants' Exhibit T be admitted into
15 evidence.

16 THE COURT: Any objection?

17 MR. BECK: No objection.

18 THE COURT: Any objection from any other
19 defendant? Not hearing or seeing any, Defendants'
20 Exhibit T will be admitted into evidence.

21 MS. JACKS: Thank you.

22 (Defendants' Exhibit T admitted.)

23 BY MS. JACKS:

24 Q. I'm going to move on to another request
25 that we made. Based on -- in that same IPRA request

1 from April 13, 2017, did we request property
2 inventory lists from the sending institution and the
3 receiving institution for inmate Lupe Urquizo, New
4 Mexico Department of Corrections No. 50572?

5 A. Yes, you did.

6 Q. And did you cause your people in your
7 office to search for those particular documents?

8 A. Yes, I did.

9 Q. And let's start with the property
10 inventory list from the second institution, the
11 Penitentiary of New Mexico. Were you able to locate
12 that property inventory list for Lupe Urquizo?

13 A. At this point in time, I can't recall
14 exactly which documents I was able to find and which
15 ones I could not find.

16 Q. Okay. Do you agree with me that one of
17 them -- there should be two, right? One from the
18 Penitentiary of New Mexico where he was -- where he
19 started off, and one from Southern New Mexico
20 Correctional Facility where he ended up?

21 A. That's correct.

22 Q. And so you recall that you were able to
23 find one, but not the other?

24 A. I don't recall that right this second,
25 because, you know, I work with a lot of documents

1 every day. I do recall that we found some
2 documents, and we did not find some. But I don't
3 recall which ones, at this point.

4 Q. Okay. Well, the response to the IPRA
5 request was provided to me; correct?

6 A. That's correct.

7 Q. And a copy of it was also provided to the
8 Government prosecuting attorneys; right?

9 A. Yes.

10 MS. JACKS: And, Your Honor, I have a
11 document property inventory list for Lupe Urquizo.
12 It's entitled "Penitentiary of New Mexico." Can
13 that be marked Defendants' U2?

14 THE COURT: You may.

15 MS. JACKS: May I approach the witness?

16 THE COURT: You may.

17 BY MS. JACKS:

18 Q. Mr. Brewster, showing you Exhibit U2, does
19 that happen to be a true and correct copy of the
20 property inventory form completed on March 6, 2014,
21 for Lupe Urquizo at the Penitentiary of New Mexico?

22 A. It does appear so, yes.

23 MS. JACKS: Your Honor, I'd ask that that
24 be admitted.

25 THE COURT: Any objection?

1 MR. BECK: Yes, Your Honor, hearsay.

2 May I voir dire the witness?

3 THE COURT: You may.

4 VOIR DIRE EXAMINATION

5 BY MR. BECK:

6 Q. Good afternoon, Mr. Brewster.

7 A. Good afternoon.

8 Q. Now, you have in front of you, I believe,
9 what's been marked as Defendants' Exhibit U2; is
10 that right?

11 A. It doesn't have any designation on it.

12 Q. Okay. That's one page of a property
13 inventory list from Lupe Urquizo; is that right?

14 A. Yes, sir.

15 Q. Well, let me see if I can do this more
16 quickly. You provided more -- in response to
17 Ms. Jacks' IPRA request, you provided more than one
18 page of Lupe Urquizo's property in the property
19 file, didn't you?

20 A. I believe that I did. I don't know
21 exactly how many pages I provided, but yes, sir, I
22 believe I did.

23 MR. BECK: May I approach and show the
24 witness what's been marked as Government's Exhibit
25 779?

1 THE COURT: You may.

2 MS. JACKS: May I see it?

3 BY MR. BECK:

4 Q. Mr. Brewster, I've provided you what's
5 been marked for identification purposes as
6 Government's Exhibit 779. Does that look to you
7 like the document you provided in response to
8 Ms. Jacks' IPRA request for Lupe Urquizo's property?

9 A. Give me just one second to review it,
10 please.

11 Q. Sure thing.

12 A. Yes, it does appear to be that.

13 Q. Now, I think earlier with Ms. Jacks you
14 said that -- well, and you testified earlier that
15 under the policy, there should be two property
16 inventory forms, each time an inmate is transferred
17 from the receiving and sending institution?

18 A. Yes, sir.

19 MS. JACKS: I'm going to object at this
20 point in time. I don't think this is going to the
21 issue of whether it's hearsay. And I would submit
22 to the Court that the foundation under 803(6) has
23 been established as an exception.

24 THE COURT: Well, are you just
25 objecting -- do you have any objection to the entire

1 document coming in?

2 MR. BECK: I do, Your Honor, yes. And I'm
3 getting there. I think that part E of Rule 803(6)
4 is that the opponent does not show that the source
5 of the information or the method or circumstances of
6 preparation indicate a lack of trustworthiness. So
7 I don't think that the foundation has been shown
8 yet.

9 THE COURT: Well, go ahead and ask your
10 question.

11 BY MR. BECK:

12 Q. I'll direct your attention, then, Mr.
13 Brewster, to page 2 -- Bates stamp 28612 on that
14 exhibit.

15 MS. JACKS: Your Honor, since I haven't
16 been provided a copy of this exhibit, may I stand by
17 the witness so I can read over his shoulder?

18 THE COURT: You may.

19 BY MR. BECK:

20 Q. Now, is that the same document that's in
21 front of you which isn't marked, but I think was
22 identified as Defendants' Exhibit U2?

23 A. Yes, it is.

24 Q. And in the policy that you went over with
25 Ms. Jacks, according to the policy regulations, both

1 the property officer and the inmate are supposed to
2 sign that document; is that right?

3 A. Yes, sir.

4 Q. And is the inventory officer's signature
5 there on either of those documents, the same
6 document?

7 A. It does not appear to be on there, no.

8 Q. Can you say with certainty that the
9 property officer, as opposed to the inmate, filled
10 out this form?

11 A. Sitting here today, no, I can't say that.

12 Q. And in that file there that you
13 provided -- you can go ahead and look at it -- but
14 did you find a second property inventory list from
15 March 6 of 2014, or anytime around there?

16 A. No, sir, I did not.

17 Q. And did you find -- when you received the
18 IPRA request, and you had people go out and get back
19 property files from the facilities, did you find any
20 other property file for Lupe Urquizo except for that
21 one in front of you?

22 A. No, sir.

23 Q. And in your review of these -- in review
24 of these documents responding to Ms. Jacks' IPRA
25 request, did you find that there were several

1 documents you expected would be in there that were
2 not?

3 A. I did find that there were several
4 documents I expected to be in there that were not,
5 yes.

6 Q. And let me ask you -- if we go back to
7 what's been marked Defendants' Exhibit U2. The top
8 of that document, it says, "Southern New Mexico" --
9 excuse me, it says, "Penitentiary of New Mexico
10 Property Inventory List"; is that right?

11 A. Yes, it does.

12 Q. And can we bring up what's been admitted
13 as Defendants' Exhibit -- well, the inventory list.

14 MS. JACKS: W8.

15 MR. BECK: Thank you. W8.

16 BY MR. BECK:

17 Q. And this document, under the policy, is
18 that labeled "New Mexico Corrections Department
19 Property Inventory List"?

20 A. Yes, it is.

21 Q. And in 2014, if an institution was abiding
22 by the New Mexico Corrections Department policy, in
23 March of 2014, would they be using this New Mexico
24 Corrections Department Property Inventory List or
25 the Penitentiary of New Mexico Property Inventory

1 List?

2 A. They should have been using the New Mexico
3 Corrections Department list.

4 Q. Now, I think you already said you cannot
5 say, for sure, who filled out that form. After
6 reviewing these documents that you provided in the
7 IPRA request, can you say definitively that making
8 these property inventory lists was a regular
9 practice of the New Mexico Corrections Department?

10 A. I can say that it was supposed to be a
11 regular practice.

12 Q. I understand that. My question was, can
13 you say it was a regular practice?

14 A. I'm not sure I can.

15 Q. That sounds like a no; is that right?

16 A. That's a no, yes.

17 Q. And can you say definitively whether
18 keeping these property inventory lists was a regular
19 conducted activity of the New Mexico Corrections
20 Department in March of 2014?

21 A. Again, I can't say that it was, but it
22 should have been.

23 Q. So is that a no, you can't say it was a
24 regularly conducted activity?

25 A. I would have to say, no, I can't say that.

1 MR. BECK: Thank you, Your Honor. So we
2 object to Defendants' Exhibit U2.

3 THE COURT: All right. Thank you, Mr.
4 Beck.

5 Well, I do think that the Government has
6 probably established 803(6)(E), and with that, I'll
7 deny the admission of the document.

8 MS. JACKS: Your Honor, I'd like to ask
9 some more questions of Mr. Brewster, if I may.

10 THE COURT: You may.

11 FURTHER DIRECT EXAMINATION

12 BY MS. JACKS:

13 Q. First of all, Mr. Brewster, are inmates
14 provided New Mexico Department of Corrections
15 Property Inventory lists to keep in their cells?

16 A. Not to my knowledge.

17 Q. Are they provided -- are they given those
18 to complete by themselves?

19 A. I don't think so.

20 Q. And you are acting as the Custodian of
21 Records for the New Mexico Corrections Department;
22 correct?

23 A. For purposes of the Public Records Act in
24 responding, yes.

25 Q. And in responding to the -- to our request

1 for the production of public records, did you
2 represent that the documents, including
3 defendants -- we have two exhibits up there, so let
4 me just see them.

5 Did you produce the documents in both
6 Defendants' Exhibit U2 and Government's Exhibit 779
7 as documents maintained by the New Mexico Department
8 of Corrections, pursuant to the requirement to
9 maintain property inventory for the transport of
10 inmates both before and after transit?

11 A. I provided all the documents I could find
12 that I thought were responsive to the public records
13 request.

14 Q. And were these documents recovered in the
15 possession of the department -- the New Mexico
16 Department of Corrections?

17 A. Yes.

18 Q. And were they recovered from the property
19 officer at both the second institution, the
20 Penitentiary of New Mexico, and the receiving
21 institution, Southern New Mexico Correctional
22 Facility?

23 A. I can't tell you today which person at
24 those institutions gathered the documents or found
25 them; I can only tell you that I provided what was

1 provided.

2 Q. Okay. And I want to ask you a couple of
3 questions comparing Defendants' Exhibit U2 to
4 Government's Exhibit 779, if I may.

5 MS. JACKS: Has 779 been admitted?

6 MR. BECK: Yes.

7 MS. JACKS: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. JACKS:

10 Q. Looking at page 1 of Government's Exhibit
11 779, can you tell us what date is on that exhibit --
12 or on that property inventory list?

13 A. At the very top of the page there is a
14 date. I can't see a date at the bottom because
15 there is an exhibit sticker on the -- where the date
16 might be. But at the top it looks like it says
17 1/28/16.

18 Q. 1/28/16. So regarding a property
19 inventory completed January 28, 2016; right?

20 A. The date is 1/28/16. I -- you know,
21 that's what it says.

22 Q. Okay. Now, the IPRA request that we made
23 on behalf of Mr. Sanchez was for property inventory
24 list on or about March 6 and 7, 2014; correct?

25 A. That's correct.

1 Q. So would you agree with me that the
2 document, on page 1 of Government's Exhibit -- I
3 forgot the number again -- is it 779 --

4 A. Yes.

5 Q. -- is a document that you provided, but it
6 wasn't directly responsive to our IPRA request?

7 A. That would be correct.

8 Q. And can you read the top of that property
9 inventory list?

10 A. It says "Penitentiary of New Mexico
11 Property Inventory List."

12 Q. So just like the document U2 that the
13 defense has offered, that document page 1 of the
14 Government's exhibit says that -- it's entitled
15 "Penitentiary of New Mexico Property Inventory
16 List."

17 A. It is entitled that, yes.

18 Q. Can we go to the next property inventory
19 list in the Government's exhibit?

20 And Mr. Brewster, is that page -- the next
21 property inventory list, is that page Bates stamped
22 28611?

23 A. Yes, it is.

24 Q. And is that regarding a property inventory
25 completed on or about December 10th of 2015?

1 A. That's what it says at the top, December
2 10, 2015.

3 Q. Okay. And again, is this responsive to
4 the IPRA request that was made on behalf of Mr.
5 Sanchez in this case?

6 A. I believe your request was for 2014, so
7 technically speaking, it's not responsive.

8 Q. And can you tell me what the top of that
9 property inventory form reads?

10 A. "Penitentiary of New Mexico Property
11 Inventory List."

12 Q. So again, it reads exactly the same as
13 Defendants' Exhibit U2 that's been offered into
14 evidence.

15 A. Yes.

16 Q. Okay. The third one is actually -- let me
17 go back, Mr. Brewster. You're looking at the one I
18 left with you, I'm sorry about that. The third one.

19 So if you turn back to the one before
20 that, that's actually the one that's identical to
21 Defendants' Exhibit U2; right?

22 A. Which one are you talking about? I'm not
23 sure.

24 Q. So the third one contained in that
25 package, Government's Exhibit 779, at Bates Page

1 28612, is that dated 3/6/2014?

2 A. Yes, it is.

3 Q. And that's the one that's identical to the
4 one that the defense has offered as Exhibit U2; is
5 that correct?

6 A. That's correct.

7 Q. Can you turn to the fourth one? I think
8 it's -- if you just flip through a few more pages,
9 it's Bates page 28621.

10 A. I'm looking at it.

11 Q. Okay. And can you tell me the date on
12 that one?

13 A. September 14 of 2012.

14 Q. And can you read the top of that property
15 inventory form?

16 A. It says Penitentiary of New Mexico.

17 Q. So, again, that form is identical to the
18 form that was used in Defense Exhibit U2?

19 A. It appears that way, yes.

20 Q. So Mr. Brewster, directing you on to the
21 next one in Exhibit 779, that would be Bates stamped
22 28622; do you see that?

23 A. I do.

24 Q. It's a poor copy, isn't it?

25 A. The signature at the bottom, that's poor

1 quality, yes.

2 Q. Can you read the date? It's difficult,
3 but can you read it?

4 A. It appears to say 3/6 something. I can't
5 read the year.

6 Q. 3/6/2014?

7 A. It could be that. I can't read it on the
8 page, though.

9 Q. Can you compare that to the property
10 inventory list that's contained in Defendants'
11 Exhibit U2 and tell me if it doesn't look like it's
12 just a duplicate?

13 A. Yes, it appears to be the same form, a
14 copy.

15 Q. Just a poorer copy of the same form?

16 A. Yes.

17 Q. Okay. Let me ask you to turn to the next
18 and last property inventory listing in Government's
19 Exhibit 779, and I think that's at 28627.

20 A. I'm there.

21 Q. And does that appear to be a property
22 inventory list completed on or about March 14, 2017?

23 A. It does appear that way, yes.

24 Q. And can you tell us what the top of that
25 form reads?

1 A. Penitentiary of New Mexico.

2 Q. And then the next line?

3 A. Property Inventory List.

4 Q. Is so it fair to say that every single
5 property inventory list contained in Government's
6 Exhibits 779 is completed on exactly the same form?

7 A. They're all completed on the Penitentiary
8 of New Mexico form or list, here.

9 Q. And the form on every property inventory
10 list in Government's Exhibit 779 is identical to the
11 form completed and offered by the defense in Exhibit
12 U2?

13 A. Can you ask that again? I'm not sure I
14 followed your question.

15 Q. Is every property inventory form in
16 Government's Exhibit 779 identical to the property
17 inventory list offered by the defense in Exhibit U2?
18 In terms of the form, not the entries in it.

19 A. Yes. The form appears to be the same,
20 yes.

21 Q. So every single form is entitled
22 "Penitentiary of New Mexico Property Inventory
23 List?"

24 A. That's correct.

25 Q. And every single form was located by you

1 or employees working under your direction within the
2 custody and control of the Penitentiary of New
3 Mexico?

4 A. That's correct.

5 Q. And showing you what's been marked as
6 Defendants' W8, did you locate any property
7 inventory forms completed on this particular form
8 entitled New Mexico Corrections Department?

9 A. I'd have to look at the forms again, to
10 tell you that for sure.

11 Q. Well, you'd have to look at the forms in
12 that exhibit? Take your time. 779?

13 A. Yes. There is one form, Bates stamped
14 28620, that says, "New Mexico Corrections Department
15 Receipt for Confiscated Property." But all the
16 other forms in this packet that I'm looking at,
17 Government's Exhibit 779, have Penitentiary of New
18 Mexico, other than that one.

19 Q. Well, and the form that you pointed out at
20 28620, it's entitled "Receipt for Confiscated
21 Property"; is that right?

22 A. That's correct.

23 Q. It's not entitled a Property Inventory
24 List?

25 A. That's correct.

1 Q. And according to the New Mexico Department
2 of Corrections policies and procedures, if at the
3 time of a property inventory, an inmate is found to
4 be in possession of property he's not entitled to
5 have, is there a procedure for confiscating that
6 property?

7 A. There is.

8 Q. And is there a form that the correctional
9 officer is required to fill out documenting the
10 confiscation of the property?

11 A. There is.

12 Q. Now, let me just go back and review with
13 you a little bit about the previous -- the previous
14 questions that I asked you.

15 According to the New Mexico Department of
16 Corrections policies and procedures, is a
17 correctional officer supposed to complete a property
18 inventory list prior to submitting an inmate for
19 transport?

20 A. Yes.

21 Q. And is a copy of that form supposed to be
22 held at the penitentiary where the transport is
23 initiated?

24 A. It is supposed to be held there, yes.

25 Q. Okay. And are correctional officers

1 employed by the New Mexico Department of Corrections
2 required to do that as part of their regular
3 activity as a correctional officer?

4 A. They are.

5 Q. And are these records -- making and
6 maintaining these records, part of the business of
7 the New Mexico Department of Corrections?

8 A. They are.

9 Q. And every document that you've been shown
10 today in Government's Exhibit 779 and Defendants'
11 Exhibit U2, were all of those documents found by
12 people working for you, in the possession of the New
13 Mexico Department of Corrections?

14 A. They were.

15 Q. And specifically where in the New Mexico
16 Department of Corrections were they located?

17 A. They were located, I believe, at the
18 Penitentiary of New Mexico. We also looked at the
19 Southern facility. I don't recall right this second
20 what we found there, but we looked in both places.

21 Q. But I mean, are they stored in an office?
22 Are they stored in a filing cabinet? Are they
23 stored in a trash can? Where were the records
24 actually physically located?

25 A. At the Penitentiary of New Mexico.

1 Q. In a property office?

2 A. In some sort of a property officer unit,
3 yes.

4 Q. In a filing cabinet that's maintained by
5 correctional officers?

6 A. I don't know if it's a filing cabinet, but
7 it's some sort of a location where they keep these
8 sorts of documents.

9 Q. And in conducting its business on a
10 day-to-day basis, does New Mexico Department of
11 Corrections rely on the records it keeps to document
12 its activities?

13 A. It does.

14 MS. JACKS: Your Honor, I would submit
15 that Defendants' Exhibit U2 should be admitted.

16 THE COURT: Well, I'm still not convinced
17 that it meets some of the standards given Mr.
18 Brewster's testimony of 803(6)(A) and (6)(B) and
19 (6)(E), so I'll exclude the document.

20 BY MS. JACKS:

21 Q. Mr. Brewster, I just have a couple more
22 questions. Assuming that Government's Exhibit 779
23 is all of the property inventory documents you were
24 able to -- your office was able to locate regarding
25 inmate Lupe Urquizo, can you tell us, were any of

1 those property inventory lists found at Southern New
2 Mexico Correctional Facility?

3 A. I don't believe that any of these were
4 found at Southern New Mexico Correctional Facility.

5 Q. And in response to the IPRA request made
6 on behalf of Mr. Sanchez back in April of 2017, did
7 your office produce any property inventory list
8 regarding inmate Lupe Urquizo from March 6 or 7,
9 2014, at Southern New Mexico Correctional Facility?

10 A. I don't believe that we did.

11 MS. JACKS: Your Honor, may I have a
12 minute?

13 THE COURT: You may.

14 MS. JACKS: I have a few more questions.

15 BY MS. JACKS:

16 Q. Mr. Brewster, I want to talk to you about
17 these property inventory lists just for a second.
18 Is one of the reasons that a property inventory list
19 is required for -- before an inmate is transported,
20 is that -- is one of the reasons that's required is
21 to document the property that's sent with the inmate
22 down to a different penal facility?

23 A. Yes.

24 Q. And is a copy of that form supposed to be
25 provided to the inmate?

1 A. I don't recall that right now. I'm not
2 sure if the policy requires that or not.

3 Q. When an inmate is transported, if you
4 know, are they transported in physical possession of
5 their property, or is their property transported
6 separately?

7 A. I don't really know that.

8 Q. Is one reason that the form is completed
9 is to provide an inventory of what property the
10 inmate should have at the receiving institution?

11 A. Yes.

12 Q. In other words, if the inmate gets down
13 there and says "Hey, wait a second, I had four bags
14 of Cheetos and they're not in here anymore," is that
15 property inventory list something that the inmate
16 would rely on to establish that he possessed four
17 bags of Cheetos?

18 A. It could be, yes.

19 MS. JACKS: So, Your Honor, I would offer
20 Defendants' Exhibit U2 under 803, subdivision 15, a
21 statement that affects an interest in property.

22 THE COURT: 803(17)?

23 MS. JACKS: I think it's 15.

24 THE COURT: Your thoughts on that, Mr.
25 Beck?

1 MR. BECK: Well, Your Honor, I think again
2 we have the trustworthiness language built into
3 that, unless later dealings between the property are
4 inconsistent with the truth of the statement of the
5 purport of the documents. And so I think Mr.
6 Brewster's testimony that he didn't find documents
7 that he was looking for either at the sending or
8 receiving institution, and that he didn't find any
9 documents from Southern New Mexico Correctional
10 Facility specifically for Lupe Urquizo show that --

11 THE COURT: But that goes more to
12 documentary evidence rather than whether there was
13 dealings with the property that are inconsistent.

14 MR. BECK: And it seems to me if this is
15 talking about -- I guess we can take a break and
16 look at it. But I don't think this document
17 purports to affect an interest in property. I think
18 that would be a legal document that affects, with an
19 A, interest in property. So --

20 THE COURT: Well, I think it might
21 establish an interest in property if it's indicating
22 what it is. This seems to me to be enough that the
23 proponent has established, that it fits in 15. So
24 I'll admit it under 803(15).

25 MR. BECK: Your Honor, may I voir dire the

1 witness on that?

2 THE COURT: You may.

3 VOIR DIRE EXAMINATION

4 BY MR. BECK:

5 Q. Mr. Brewster, as part of your duties and
6 responsibilities as a general counsel of the New
7 Mexico Corrections Department, do you ever get
8 involved with disputes about confiscated or
9 destroyed or otherwise eradicated inmate property?

10 A. Occasionally; rarely.

11 Q. Okay. And on those occasions when you
12 have, have you ever dealt with an inventory property
13 list in relation to that dispute about lost,
14 confiscated, or stolen property of an inmate?

15 A. I can't recall that I ever have, sitting
16 here today; it hasn't been a common issue.

17 Q. Okay. Well -- and I appreciate that, and
18 I wish there was some way I could help you out. Try
19 to think back and recall affirmatively whether you
20 can ever remember, even once, dealing with a
21 property inventory form in relation to one of these
22 claims.

23 A. I don't recall that, sitting here today.

24 MR. BECK: Thank you.

25 THE COURT: All right. Well, Defendants'

1 Exhibit U2 will be admitted into evidence.

2 (Defendants' Exhibit U2 admitted.)

3 MS. JACKS: Thank you, Your Honor. May I
4 publish it to the jury?

5 THE COURT: You may.

6 MR. BECK: Your Honor, I'm going to object
7 to the entry of this document. If we can take it
8 off real quickly there.

9 It looks to me like reading 15 is
10 statements in documents that affect the interest of
11 property, and not the document itself. So 803(6)
12 may relate to the documents as business records.
13 803(15), which is the underlying level of hearsay
14 that may be admitted on a statement-by-statement
15 basis.

16 THE COURT: Well, I don't know how you
17 admit the statements in a document without admitting
18 the document, so overruled.

19 MS. JACKS: Thank you, Your Honor. May I
20 publish the document?

21 THE COURT: You may.

22 FURTHER DIRECT EXAMINATION

23 BY MS. JACKS:

24 Q. So Mr. Brewster, just briefly looking at
25 this, does this document appear to be a property

1 inventory list completed on March 6, 2014, for
2 inmate Lupe Urquizo?

3 A. It does appear that it is.

4 Q. And directing your attention to the bottom
5 half of the page, under "Miscellaneous Items." Do
6 you see a section of the property inventory list
7 that specifically references "Legal Letters"?

8 A. I do.

9 Q. And is there anything noted under that --
10 is there anything noted next to "Legal Letters"
11 under "Miscellaneous Items?"

12 A. There is not.

13 Q. And is there also a space for the person
14 filling it out to -- if the item isn't delineated,
15 are there spaces on the right-hand side of the form
16 for the officer to list items that are not otherwise
17 listed?

18 A. Yes.

19 Q. And, in fact, on this particular property
20 inventory form, under "Items Not Listed," it lists
21 two spoons, a radio -- I guess a Jensen radio, and a
22 Hiteker remote; is that correct?

23 A. That's correct.

24 Q. Do you see any listing for legal materials
25 in this property inventory form?

1 A. No.

2 MS. JACKS: Thank you, Your Honor. I have
3 nothing further.

4 THE COURT: Thank you, Ms. Jacks. Any
5 other defendant have examination of Mr. Brewster?

6 MS. DUNCAN: No, Your Honor.

7 THE COURT: Mr. Beck, do you have
8 cross-examination of Mr. Brewster?

9 MR. BECK: I do, Your Honor, thank you.

10 THE COURT: Mr. Beck?

11 CROSS-EXAMINATION

12 BY MR. BECK:

13 Q. Mr. Brewster, I would like to talk to you
14 about your IPRA responses. Along with Mr. Urquizo's
15 property file, did you also provide a property file
16 for Enriquez Reynaldo (sic)?

17 A. I believe that I did, yes.

18 MR. BECK: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 BY MR. BECK:

22 Q. I'm showing you what's been marked
23 Government's Exhibit 773 for identification
24 purposes. Is that the property inventory for
25 Enrique Reynaldo -- sorry, Reynaldo Enriquez, that

1 you provided in response to Ms. Jacks' IPRA request?

2 A. Give me just a second to review it,
3 please.

4 Q. Sure.

5 A. Yes, it appears to be those documents.

6 MR. BECK: Your Honor, the United States
7 moves to admit Government's Exhibit 773.

8 THE COURT: Any objection? Ms. Jacks?

9 MS. JACKS: May I see it one more time?
10 I'm sorry, I haven't been provided a copy. Your
11 Honor, may I have a moment, because I believe a page
12 might be missing. May I confer with Mr. Beck?

13 THE COURT: You may.

14 MS. JACKS: Your Honor, we have an
15 objection. I think we're going to have to argue it
16 outside the presence of the jury.

17 THE COURT: All right. Well, why don't we
18 go ahead and let the jury go for the evening.

19 Before they go, since I didn't give these
20 instructions before we broke last Friday night
21 because we were trying to get out of here, I'm going
22 to remind the jury of a few things that are
23 especially important.

24 Until the trial is completed, you're not
25 to discuss the case with anyone, whether it's

1 members of your family, people involved in the
2 trial, or anyone else, and that includes your fellow
3 jurors. If anyone approaches you and tries to
4 discuss the trial with you, please let me know about
5 it immediately.

6 Also, you must not read or listen to any
7 news reports of the trial or get on the internet or
8 do any research for the purposes of this case. And
9 finally, remember that you must not talk about
10 anything with any person involved in the trial, even
11 if it doesn't have anything to do with the trial.

12 If you need to speak to me, simply give a
13 note to one of the Court Security Officers or Ms.
14 Standridge. I'll try not to repeat these every time
15 we take a break tomorrow, but please keep them in
16 mind. I may say them a little bit more often as we
17 transition in this case. So bear with me and be
18 patient. They are extremely important, and as we
19 sort of bring this case somewhat in for landing,
20 let's really work hard to keep them in mind.
21 Everybody has tried real hard to do that for four
22 weeks. So let's try to keep after it.

23 All right. Y'all have a good evening and
24 we'll see you at 8:30 in the morning.

25 All rise.

1 (The jury left the courtroom.)

2 THE COURT: All right. Everyone be
3 seated.

4 All right. How do you want to proceed?

5 MR. BECK: We can just turn on the -- turn
6 on the thing, and I can make my argument.

7 THE COURT: All right. Maybe I ought to
8 hear the objection.

9 MS. JACKS: Here's the issue: With
10 respect to the response to my IPRA request, it came
11 in over the course of several dates. But one of the
12 documents that was provided was a property inventory
13 list for inmate Reynaldo Enriquez from the Southern
14 New Mexico Correctional Facility dated March 7,
15 2014. It was included with other documents
16 regarding Reynaldo Enriquez, and actually mixed in
17 with some documents that didn't pertain to Reynaldo
18 Enriquez, but a different person.

19 The exhibit that Mr. Beck has tendered is
20 not the complete record of what was provided to us
21 in response to the IPRA request we made in April of
22 2017. What is specifically missing, at least the
23 thing I noticed right away that's missing, is that
24 particular property inventory form.

25 And so I object because the Government is

1 misrepresenting what was provided by the New Mexico
2 Department of Corrections in response to my IPRA
3 request. And they also haven't provided me a copy
4 of their exhibit, so I can't go through page by page
5 to compare. But at least one important page is
6 missing.

7 THE COURT: Well, on Reynaldo Enriquez,
8 are you trying to introduce everything that was
9 given to you by Mr. Brewster?

10 MR. BECK: I will. Not at this moment,
11 but I will eventually.

12 THE COURT: All right. If they're going
13 to get everything for Reynaldo Enriquez, is there
14 any reason not to keep that out, as long as they
15 give everything as to Enriquez?

16 MS. JACKS: Well, I think the problem is,
17 and what Mr. Beck is representing to me, is what he
18 has marked is everything. And it's not.

19 I think there is an insinuation that
20 somehow I got a document regarding Reynaldo Enriquez
21 in some other way, which I'm not quite sure what
22 that would be.

23 THE COURT: Is that your intent?

24 MR. BECK: Yeah, I intend to show that.
25 So here's -- so this is the document I just provided

1 to him -- to Mr. Brewster, which was the document
2 that was provided in response to the IPRA request.

3 And I completely agree with Ms. Jacks, as
4 I just told her, that that document that she has for
5 Reynaldo Enriquez, is not in there. This was the
6 next exhibit I was intending to introduce, 778, for
7 which the top document is the document that she's
8 thinking of. And this has other documents from
9 Southern Correctional facility. I don't know where
10 it came from. It's not Bates numbered at the
11 bottom. Our copies are Bates numbered at the
12 bottom. But it was not provided to the Government
13 by Mr. Brewster in response to an IPRA request.

14 THE COURT: Well, if both documents are
15 coming in, right --

16 MR. BECK: Right.

17 THE COURT: -- you're going to introduce
18 both of them. Don't both of you have, then, the
19 tools that you need to cross-examine Mr. Brewster
20 and make your point?

21 MS. JACKS: I'm just not sure. I'd like
22 some time to confer with Mr. Beck, because it seems
23 like -- I mean, I'm not clear if I'm being accused
24 of something, or if -- I think if I show Mr. Beck
25 the emails that we received from Mr. Brewster and

1 his office, he'll see that every document that he's
2 holding came through an IPRA request.

3 THE COURT: Well, it sounds to me like --
4 I mean, he may not have a point, but it seems to me
5 the two documents ought to come in, and both of you
6 have the tools to ask the questions of Mr. Brewster.

7 So we can wait until in the morning before
8 I rule. But I'm inclined to allow both 773 and --
9 what's the next one marked as, Mr. Beck?

10 MR. BECK: I just put it away. 778.

11 THE COURT: Okay. So I'll be inclined to
12 admit them, because it sounds like there is really
13 no objection to these. Both of you think that these
14 documents were -- relate to the complete file for
15 Mr. Reynaldo Enriquez. Then you can make whatever
16 point you want to make with the witness.

17 MS. JACKS: May I request electronic
18 copies of both of those this evening so I can
19 compare to my emails?

20 MS. BHALLA: Your Honor, if I may,
21 Defendant Herrera has an objection to admission of
22 this particular document on relevance grounds.

23 THE COURT: Okay. Well, I'm inclined to
24 allow it, but we can take that up in the morning.

25 But unless I hear something else in the

1 morning, I'll probably admit these and then we'll go
2 ahead and continue the examination of the witness.

3 All right, y'all have a good evening.

4 MR. LOWRY: Your Honor, before we go off
5 the record, the citations?

6 THE COURT: What I'll do is I'll have --
7 I'll give them to Ms. Standridge and she'll send the
8 citations to all of you. It will just be the
9 citations. I want to make a few more comments
10 before I quit, and then let y'all respond. But I'll
11 have her just email those to y'all.

12 MR. LOWRY: Thank you, Your Honor.

13 (The Court stood in recess.)
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1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

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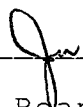
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